

Page 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION  
CAROL ANN SMITH, :  
Plaintiff :  
:  
-vs- : No. 3:11-CV-00560  
PERKINS BOARD OF :  
EDUCATION, et al.

Defendants :  
-----

Deposition of JIM GUNNER, a herein, taken by the  
Plaintiff as upon cross-examination before Brenda  
Huntley Roberts, Registered Merit Reporter and  
Notary Public in and for the State of Ohio, at  
Murray & Murray Co., L.P.A., 111 E. Shoreline  
Drive, Sandusky, Ohio on Friday, April 4, 2014 at  
9:30 a.m. pursuant to stipulations of counsel.  
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Page 2

1 APPEARANCES  
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12 ALSO PRESENT:  
13 Steve Finn  
14  
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Page 3

## 1 INDEX

## 2 JIM GUNNER

3 Cross-examination by Mr. Belazis 5  
4 Direct examination Ms. Grigsby 186  
5 Recross-examination by Mr. Belazis 220  
6 Redirect examination Ms. Grigsby 224  
7 Con't Recross-examination by Mr. Belazis 224  
8

## 9 EXHIBITS

## 10 MARKED PLAINTIFFS

11 Exhibit 26, Board Notes 42  
12 Exhibit 27, Memo, Danielle Fahning 63  
13 Exhibit 28, Letter to Dr. Kale 82  
14 Exhibit 29, Fit For Duty Exam 84  
15 Exhibit 30, Administrator Eval 101  
16 Exhibit 31, Teaching Schedule 112  
17 Exhibit 32, Master Schedule 112  
18 Exhibit 33, Letter 4/15/10 119  
19 Exhibit 34, Resolution to Consider  
Termination 120  
20 Exhibit 35, Copy of Playgirl Harrison Ford 138  
21 Exhibit 36, Playboy Barbara Streisand 138  
22 Exhibit 37, Letter 11/11/10 150  
23 Exhibit 38, Board Notes  
24 Exhibit 39, Email 169  
25 Exhibit 40, Board Notes 4/17/10 173

Page 4

1 EXHIBITS REFERRED TO:  
2 PLAINTIFFS  
3 Exhibit 25, Eval of Mrs. Smith 101  
4 Exhibit 2, Affidavit Mr. Gunner 21  
5 Exhibit 3, Disciplinary documents 45  
6 Exhibit 4, Letter from Mr. Zraik 55  
7 Exhibit 5, Letter from Mr. Gunner 55  
8 Exhibit 6, Letter from Mr. Gunner 55  
9 Exhibit 7, Disciplinary 73  
10 Exhibit 8, 10-day Unpaid Suspension 75  
11 Exhibit 22, Eval for Ms. Smith 104  
12 Exhibit 10, Letters 112  
13 Exhibit 11, Sequence of Letters 116  
14 Exhibit 13, Notes 150  
15 Exhibit 16, Photographs 151

## 16 INSTRUCTION NOT TO ANSWER

17 183

## 18 INSTRUCTION TO SEAL

19 Discussion in Executive Session Referred to 161  
20  
21  
22  
23  
24  
25

1 (Pages 1 to 4)

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Page 5

Sandusky, Ohio  
Friday, April 4, 2014  
9:25 a.m. - 5:30 p.m.  
-oOo-

JIM GUNNER,  
called as a witness on behalf of Defendants,  
having been first duly sworn, was examined and  
testified as follows:

## CROSS-EXAMINATION

MR. BELAZIS: Two preliminary matters  
before we get going. The first is the deposition  
of Mr. Gasteier's taken a couple of weeks ago,  
there was an Exhibit 25, which inadvertently  
omitted a part of the exhibit, more specifically,  
the evaluation of Mr. Gasteier that was performed  
for the 2009-2010 school year. And with consent  
of both counsel, we are going to ask the court  
reporter to include a copy of that with exhibit  
25 right along with today. All right. So take  
care of that.

And then the second part of that with  
respect to the exhibits in Mr. Gasteier's

Page 6

deposition the numbers count from No. 23 to No.  
25. There's no marked 23 and no marked 24, and  
the reason is that the last exhibit, 25, is  
actually marked 23, but it was misread during the  
deposition, referred to as 25 and so we have now  
marked it as 25. So there is no Exhibit 23 and  
no Exhibit 24 and that's the reason for the skip.  
BY MR. BELAZIS:

Q Mr. Gunner, would you tell us a little bit about  
your educational background?

A Educational background, I have a Bachelor's  
degree in mathematics from Kenyon College, a  
Master's degree in curriculum instruction from  
the University of Toledo, a doctorate from the  
Bowling Green State University in leadership  
study. I have also taken course work at the  
University of Cincinnati. That course work led  
to certification as principal and also assistant  
superintendent.

Q Okay. And, by the way, I haven't gone through  
all the formalities of explaining what a  
deposition is about. You were here for Mr.  
Gasteier's deposition?

A No, I was not.

MS. GRIGSBY: He was not.

Page 7

THE WITNESS: I was here for Carol.

BY MR. BELAZIS:

Q Oh, that's right. You were here for Carol's  
deposition and you understand that I represent  
Mrs. Smith in this litigation and you also  
understand the rules of deposition as explained  
by your counsel during that deposition I take it?

A Yes, sir.

Q Okay. And you're still employed as  
superintendent in the Perkins School District?

A Yes.

Q And you began in, what was it, May of 2007?

A May 1, 2008.

Q Okay. So that would have been at the conclusion  
of the -- near the conclusion of the 2007-2008  
school year?

A Yes.

Q And prior to that, where had you served?

A I started my career as a teacher in the Oregon  
City School system as a junior high math and  
computer science teacher.

Q Oregon?

A City Schools, Oregon, Ohio.

Q Oregon, Ohio.

A I taught math and computer science for

Page 8

3-1/2 years. I then moved to the Benton-Carroll  
School District in Oak Harbor, Ohio, I was their  
director of technology. I left the  
Benton-Carroll School District and went to the  
Forest Hills School District in Cincinnati Ohio  
as their director of technology. I was  
reassigned my last several months in Forest Hills  
to be assistant principal at one of their seven  
to 12 high schools. I then became principal at  
Napoleon Area City Schools in their middle school  
for four years. I left Napoleon and became  
principal in the Bryan City School District for  
three years. I was then promoted and selected as  
their superintendent for seven years, and now I  
have been six years here in Perkins as  
superintendent as well.

Q What year did you graduate from Kenyon?

A 1984, May.

Q They used to play Denison in basketball, didn't  
they?

A Yes, they were both members of the Ohio Athletic  
Conference.

Q Tell me a little bit about your, from your  
perspective, your responsibilities as  
superintendent?

2 (Pages 5 to 8)

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Page 9

- 1 A Superintendent is the CEO of the school district.  
 2 They oversee the whole operations of the school  
 3 district other than the financial office.  
 4 Basically there are two employees who report  
 5 directly to the board; the superintendent and the  
 6 treasurer. The treasurer oversees the financial  
 7 aspects of the school district; the  
 8 superintendent oversees everything else. So  
 9 that's overseeing all employees outside of the  
 10 treasurer's office. It's overseeing things such  
 11 as curriculum, student discipline, budgetary  
 12 matters for the district, maintenance and care  
 13 for the district, long-range planning. You know,  
 14 pretty much anything and everything that isn't  
 15 financial ultimately falls under the authority of  
 16 the superintendent.  
 17 Q And that, you may have mentioned this, but that  
 18 includes staff discipline?  
 19 A Yes.  
 20 Q Tell me a little bit about that process, how  
 21 you're involved in it.  
 22 A It depends on the staff position and staff level.  
 23 But typically all employees report to either a  
 24 supervisor or a principal who is their immediate  
 25 supervisor in terms of day-to-day performance.

Page 10

- 1 That principal or supervisor would conduct  
 2 typically, annual evaluations of the performance.  
 3 They will also handle any immediate disciplinary  
 4 concerns from the staff members. The  
 5 superintendent gets involved if there are repeat  
 6 offenses that ultimately elevate from the  
 7 supervisor upward. That would be if the  
 8 supervisor or principal felt that the discipline  
 9 warranted a suspension or more because, by  
 10 contract, I'm the only one who can suspend an  
 11 employee from work. Usually even on minor  
 12 infractions, the supervisors and principals are  
 13 making the superintendent aware if there's an  
 14 employee concern, and but not always, if it's  
 15 just a minor offense. But certainly if it  
 16 elevates or repeats, there's an expectation of  
 17 communication at my level. Ultimately, if an  
 18 employee has been verbally warned, has seen a  
 19 written reprimand and the behavior continues, we  
 20 typically have a progressive disciplinary policy  
 21 in both contracts that walks through a -- it  
 22 could be a non-verbal reprimand beginning, it  
 23 could be -- or a verbal reprimand, excuse me,  
 24 initially to a written reprimand. If it elevates  
 25 to a point where a suspension, whether it's paid

Page 11

- 1 or not, that's generally referred to me.  
 2 Q So when it comes to the investigation of alleged  
 3 infraction of rules, who ordinarily would be  
 4 responsible for that?  
 5 A It depends what level it's at. If it's at the  
 6 initial level, it's an initial infraction, an  
 7 initial concern, typically the supervisor or the  
 8 principal would handle that. If the employee has  
 9 been reprimanded to the point of a suspension,  
 10 and it looks like a further suspension or more  
 11 serious, potential termination may be in order,  
 12 then usually, as superintendent, I would get  
 13 involved in that investigation.  
 14 Q Okay. And when you say you would get involved,  
 15 what level of -- what degree of involvement would  
 16 you have?  
 17 A It could vary depending again on how much the  
 18 supervisor or principal has done. I certainly  
 19 would follow up and have conversations with them  
 20 about what have they discovered, who they talked  
 21 to, how are they handling that process. If there  
 22 were witnesses to interview, I would probably be  
 23 involved in interviewing those witnesses at that  
 24 stage if we were looking at serious discipline.  
 25 Q And by serious discipline, what do you mean?

Page 12

- 1 A Any kind of suspension and/or potential  
 2 termination when it reaches that level. You  
 3 know, at that level, I pretty much would take  
 4 charge of the full investigation.  
 5 Q What role, if any, would the principal have?  
 6 A I usually would have them with me in the  
 7 interviews of any kind of a person involved in  
 8 the case. I typically would have them sit in on  
 9 the disciplinary hearing with the employee. We  
 10 consult with them about the previous behaviors  
 11 that led to the current investigation and current  
 12 situation. They would be in more of a  
 13 sit-and-listen and consulting role with me at  
 14 that stage.  
 15 Q By consulting, you mean they would offer their  
 16 input?  
 17 A Offer their input.  
 18 Q With respect to the investigation?  
 19 A Offer their input in regards to --  
 20 Q The whole process?  
 21 A The entire process in terms of the questions that  
 22 may need to be asked, in terms of the answers  
 23 that are given, are they consistent with what the  
 24 principal knows to be true and is in heard in  
 25 their preliminary investigation or in

3 (Pages 9 to 12)

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Page 13

1 conversations they have had and all the way  
2 through consultation about ultimately what, if  
3 any, discipline should be issued.  
4 Q That's just the way you did it?  
5 A Yes.  
6 Q Consistently?  
7 A Yes.  
8 Q And can you think of any exceptions to that?  
9 A Well, there are times when the principal is not  
10 available. In this particular case, I can think  
11 of an incident where Mr. Gasteier was out of town  
12 and so I stepped in and handled the initial  
13 investigation without him. When he returned, he  
14 was brought into the investigation. So there are  
15 times when the principal may not be available  
16 that I proceed without them.  
17 Q Okay. But outside of that, you have  
18 consistently, at least to the best of your  
19 knowledge, consistently followed the process you  
20 just described?  
21 A To the best of my knowledge.  
22 Q And that would include this particular incident?  
23 A Yes.  
24 Q By that you meant Carol Smith, right?  
25 A If you're referring to the sequence of

Page 14

1 disciplinary actions regarding Carol Smith, yes.  
2 Q Okay. Now, in the event that you decide that  
3 termination is appropriate, what steps do you  
4 follow?  
5 A Well, if I believe a termination may be  
6 appropriate.  
7 Q I'm sorry, let me ask one question before that.  
8 I'll withdraw that question. At any point prior  
9 to the point that you decide that you want --  
10 that recommendation is appropriate, I mean, that  
11 termination is appropriate, do you have board  
12 involvement in the decision-making?  
13 A In the decision-making, no; in keeping them  
14 informed, yes.  
15 Q Okay.  
16 A But not on the decision-making.  
17 Q So at the point that you decide that the  
18 termination is appropriate, what steps are  
19 followed?  
20 A Well, if I determine that the termination I  
21 believe is the appropriate step, the first thing  
22 I do is call an attorney and I sit down and spend  
23 a considerable amount of time going from  
24 beginning to end, through all the information I  
25 have with the attorney, to, again, get an opinion

Page 15

1 whether termination would be appropriate and  
2 whether we have followed the proper procedures up  
3 to that stage to potentially look at termination.  
4 If the legal advice is yes at that stage, then  
5 usually what happens is the attorney will draft  
6 an initial letter to the employee indicating to  
7 them that I will be recommending termination at  
8 the next board meeting. That draft is certainly  
9 then reviewed between the attorney and myself  
10 prior to being sent out to ensure its accuracy.  
11 I usually make the board aware that I'm looking  
12 at a termination proceeding and why, and that I  
13 will be meeting with the attorney to review  
14 everything before making a final decision. If  
15 everything at that stage still leads towards a  
16 termination, we would then send the letter out,  
17 which allows that employee then to be notified  
18 that a hearing is going to take place before the  
19 board, that they have a right to be at that  
20 hearing, and that they have the right to, again,  
21 present evidence and their arguments to the board  
22 at that point.  
23 Typically, the employee does not show  
24 up at that hearing. They typically wait until  
25 the board takes action, either to support or not

Page 16

1 support my recommendation for termination. They  
2 then -- usually we receive at that stage a  
3 notification from whatever union representative,  
4 whether it's teachers or not, that they are  
5 requesting a private termination hearing  
6 proceeding versus termination directly through  
7 the board. And then we start down that process.  
8 Q Okay. The board doesn't, I take it, doesn't  
9 conduct its own investigation independently of  
10 what you do?  
11 A They do not.  
12 Q So basically what they know about the  
13 circumstances of a proposed termination is  
14 information they receive from you during your  
15 presentations to them?  
16 A Either during written documents to them and/or  
17 conversations within executive session, yes.  
18 Q And by written, you mean written information that  
19 you submit to the board about these  
20 circumstances?  
21 A I typically send the board every Friday board  
22 notes, and I'll give them highlights on whatever  
23 is happening in the district. I shouldn't say  
24 Friday, it's usually every weekend. And I might,  
25 if there's an employee disciplinary issue concern

4 (Pages 13 to 16)

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Page 17	Page 19
<p>1 going on, at least give them a brief overview in</p> <p>2 writing. I try not to put too many details in</p> <p>3 writing because those documents can be selected</p> <p>4 and requested as public documents. Normally,</p> <p>5 what I will say is that, you know, in our next</p> <p>6 board meeting I would like an executive session</p> <p>7 to discuss this in more detail with you and fill</p> <p>8 you in on the detail and allow you to ask</p> <p>9 questions and so on.</p> <p>10 Q Okay. So, but just to be clear, the written</p> <p>11 information that you refer to that you might</p> <p>12 submit to the board with regard to a particular</p> <p>13 employee's disciplinary action or proposed</p> <p>14 disciplinary action would be the board minutes?</p> <p>15 A No, not the board minutes, it would be in board</p> <p>16 notes that I send them.</p> <p>17 Q I'm sorry. I misspoke, board notes?</p> <p>18 A Board notes that I send them.</p> <p>19 Q Okay.</p> <p>20 A It's my weekly way of communicating to the board</p> <p>21 on a variety of things that are going on in the</p> <p>22 district. They would receive, again, detailed</p> <p>23 information then on executive session, I would</p> <p>24 not share detailed information and/or notes.</p> <p>25 Q And by detailed information, do you mean that's</p>	<p>1 because there was concern about how to build her</p> <p>2 schedule for the following year. As the high</p> <p>3 school and middle school were building their</p> <p>4 schedule, the high school principal at the time,</p> <p>5 Mr. Gasteier, informed me that the business</p> <p>6 classes selected by the students had diminished</p> <p>7 to the point where we only really needed, I</p> <p>8 believe, three classes taught in the business</p> <p>9 department. That would have meant a half time</p> <p>10 position for Carol at that time. It might have</p> <p>11 been for, but it was clearly not a full-time</p> <p>12 position. So there was some concern,</p> <p>13 conversation about what do we do with the rest of</p> <p>14 her schedule. One of the directives the board</p> <p>15 had given me was to look at all aspects of the</p> <p>16 program for cost savings and certainly we</p> <p>17 couldn't afford to have a teacher teach half time</p> <p>18 and pay full-time. That led to a conversation</p> <p>19 with Mr. Finn about possibilities of using her at</p> <p>20 the middle school outside of the high school</p> <p>21 schedule. And that ultimately led to the final</p> <p>22 schedule for the 2007-2008 school year.</p> <p>23 Q There was some change in the keyboarding classes</p> <p>24 that were taught at some point?</p> <p>25 A That, I don't know because, again, this would</p>
Page 18	Page 20
<p>1 the information received from you during the</p> <p>2 executive session?</p> <p>3 A Correct.</p> <p>4 Q Tell me something about, let's talk about Carol</p> <p>5 Smith for just a moment.</p> <p>6 A Uh-huh.</p> <p>7 Q You said you arrived in early May, 2008. What</p> <p>8 information, if any, came to your attention about</p> <p>9 Carol?</p> <p>10 A None in 2008. I didn't know. I think I met her,</p> <p>11 they had a -- they called it a Meet Jim Night as</p> <p>12 sort of an opening night in the community to</p> <p>13 introduce me as the superintendent. As I recall,</p> <p>14 Carol was there. I had greeted her among</p> <p>15 hundreds that I greeted that evening. Other than</p> <p>16 that, I didn't know.</p> <p>17 Q So by 2008, you're referring to the 2007-2008</p> <p>18 school year?</p> <p>19 A Correct.</p> <p>20 Q Okay. And there was only a month or so roughly</p> <p>21 of the school year left by the time you arrived?</p> <p>22 A Correct.</p> <p>23 Q And then during that summer, did any information</p> <p>24 about Carol Smith come to your attention?</p> <p>25 A Not about Carol, but about a schedule for Carol</p>	<p>1 have been my first year coming in to see the</p> <p>2 schedules. What I was aware of is that Mr. Finn</p> <p>3 had a need for someone to teach a sixth grade</p> <p>4 keyboarding class, and he did not have the</p> <p>5 staffing to cover that, when Carol being a</p> <p>6 business teacher, had taught the high school</p> <p>7 keyboarding classes for many years when we taught</p> <p>8 keyboarding, so it seemed to be a natural fit to</p> <p>9 assign that to her. And then to round out her</p> <p>10 schedule, we had her supervising in-school</p> <p>11 suspension outside of that.</p> <p>12 Q There was keyboarding, the keyboarding classes</p> <p>13 were eliminated at some point?</p> <p>14 A The following year we eliminated the sixth grade</p> <p>15 keyboarding class.</p> <p>16 Q And were there fewer business courses that were</p> <p>17 taught during that 2008-2009 school year?</p> <p>18 A Similar. They were either three or four, enough</p> <p>19 for a half-time position only at the high school.</p> <p>20 Q Were there previously more, a larger number of</p> <p>21 classes offered?</p> <p>22 A Yes, it's my understanding that there were enough</p> <p>23 to justify a full-time teacher previously. I</p> <p>24 don't know exactly how many courses were offered</p> <p>25 previously prior to my arrival, but it was my</p>

5 (Pages 17 to 20)

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Page 21

1 understanding there were more.  
 2 Q Okay. So anything else that came to your  
 3 attention that summer about Carol Smith?  
 4 A Not that I recall.  
 5 Q Let me hand you what was marked previously as  
 6 Plaintiff's Exhibit 2. By the way, did you have  
 7 an opportunity to review anything prior to  
 8 today's deposition?  
 9 A I met with the board's attorney and so we  
 10 certainly had some conversations there in  
 11 preparation. Within the last several weeks, I've  
 12 reviewed my testimony at the termination hearing,  
 13 I've reviewed other testimony at the termination  
 14 hearing, I've reviewed some of the documents that  
 15 have been used as exhibits at that time frame.  
 16 That was what I had done.  
 17 Q Have you reviewed Mr. Gasteier's deposition  
 18 testimony?  
 19 A Deposition testimony with you?  
 20 Q Uh-huh.  
 21 A Yes, I have.  
 22 Q Okay. And did you review the documents  
 23 associated, that were marked as exhibits during  
 24 his testimony?  
 25 A I can't say that I reviewed every single one of

Page 22

1 them. I didn't have those in front of me as I  
 2 read his testimony. I don't know that there were  
 3 any references that I wasn't familiar with.  
 4 Q Okay. And at least the references you had  
 5 recently reviewed within the past few weeks?  
 6 A Yes.  
 7 Q Okay. Now, let me hand you what's previously  
 8 marked as Plaintiff's Exhibit No. 2. Do you  
 9 recognize that as an affidavit that you executed  
 10 in connection with an EEOC charge filed by Mrs.  
 11 Smith?  
 12 A Yes.  
 13 Q Okay. And if you look at the third paragraph,  
 14 you state in your affidavit, "Shortly after I  
 15 became superintendent, I received reports of  
 16 teacher Carol Smith sleeping when she was  
 17 supposed to be teaching or otherwise supervising  
 18 students. I was advised that this was a problem  
 19 since at least the 2007-2008 school year." Do  
 20 you see that?  
 21 A Yes, sir.  
 22 Q And you also make reference to learning that Ms.  
 23 Smith's refusal to exit the high school during a  
 24 fire drill during the 2007-2008 school year  
 25 resulted in a citation against the district?

Page 23

1 A Yes, sir.  
 2 Q What was the -- when you say shortly after, when  
 3 was that?  
 4 A That would have been in the fall of 2008, the  
 5 start of 2008-2009 school year.  
 6 Q Okay.  
 7 A I can't give you specific dates, but sometime in  
 8 the early fall.  
 9 Q Okay. So it would have been, for example, in  
 10 September or perhaps October?  
 11 A The initial event that I recall is Mr. Finn  
 12 calling me with concerns about Carol sleeping in  
 13 four separate instances at the middle school, and  
 14 asking my advice as his new boss. And following  
 15 up on that conversation with Mr. Gasteier, it's  
 16 my recollection I learned about other incidents  
 17 previously at the high school in the 2007-2008  
 18 school year or prior to that, and then also about  
 19 the fire alarm incident. So it was all in that  
 20 same time frame in September, early October of  
 21 2008.  
 22 Q What was it that you learned?  
 23 A Mr. Dahlman informed me, if I recall correctly,  
 24 that there was a time that he felt that he had  
 25 walked in on Mrs. Smith, and that she was

Page 24

1 sleeping, and that there were rumors around the  
 2 high school about her sleeping in class. Maybe,  
 3 I don't recall that any of them were confirmed or  
 4 any investigation had been done other than the  
 5 one specific incident I believe Mr. Dahlman  
 6 personally saw her. And then specifically about  
 7 the failure to exit the building in the fire  
 8 drill.  
 9 Q Okay.  
 10 MS. GRIGSBY: I'm going to interpose an  
 11 objection simply because I think the record may  
 12 be unclear or I was unclear as to the time frame  
 13 that you were talking about. And --  
 14 MR. BELAZIS: Let me ask him to clarify  
 15 that.  
 16 BY MR. BELAZIS:  
 17 Q The time frame, why don't you clarify the time  
 18 frame that you were just referring to.  
 19 A It would have been, again, the beginning of the  
 20 2008-2009 school year. It would have been right  
 21 around the time Mr. Finn first notified me of  
 22 concerns about Carol Smith, sometime in the early  
 23 fall, September, October, sometime frame. I  
 24 don't recall the exact dates.  
 25 Q Okay. Did anything occur as a result of that

6 (Pages 21 to 24)

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Page 25

1 initial notification?

2 A Well, these were incidents in terms of my

3 conversation with Mr. Dahlman, Mr. Finn, Mr.

4 Gasteier, other than the ones that Mr. Finn was

5 dealing. So let me separate those. The ones at

6 the high school had happened well before I was

7 there, so I didn't feel there was anything I

8 could do about it retroactively at this point.

9 So either, you know, they were appropriately

10 dealt with at the time or there wasn't sufficient

11 evidence to do anything with it. So it was more,

12 I think, background information provided me by

13 the high school principal than anything else.

14 Q And I guess my question is what prompted them to

15 provide you with this background information?

16 A Because Carol taught in both buildings, I had a

17 conversations with them about, did they have any

18 similar concerns that had now been raised by Mr.

19 Finn.

20 Q Okay. So there wasn't any disciplinary action

21 going on at that point, it was just that Mr. Finn

22 had this concern and they related this

23 information to you?

24 A Right. Mr. Finn called me and expressed concern

25 about these four incidences that had occurred

Page 26

1 very early on in the fall of the 2008-2009 school

2 year.

3 Q So he had already notified you about that?

4 A We had already had a phone conversation about

5 that. In that phone conversation, he was asking

6 my advice as superintendent, as a new boss, as a

7 new superintendent, how should he proceed. So we

8 had a phone conversation where we looked at both

9 board policy, we looked at contract negotiation

10 procedures and I advised him on how to move

11 forward. And in essence, I advised him to invite

12 Carol into -- to send her a letter advising her

13 of the four specific concerns, and that there was

14 going to be a disciplinary hearing, that there

15 could be disciplinary consequences as a result of

16 hearing, and that she had a right to have union

17 representation present during the hearing.

18 Q Okay. So let me stop you there because I just

19 want to make sure that I'm real clear.

20 A Uh-huh.

21 Q Were you initially notified of the issues that

22 you described regarding Mrs. Smith prior to the

23 time that you were notified about these incidents

24 in September of 2009 or in connection with that?

25 A They were after the phone call. As I recall,

Page 27

1 they were after the phone call from Mr. Finn.

2 Q Okay.

3 A They were the result of my reaching out to the

4 high school principal and assistant principal

5 were there any similar concerns of Mrs. Smith at

6 the high school as she had previously taught

7 there full-time and was teaching there part-time.

8 So it's my recollection that they came out as a

9 result of my following up from Mr. Finn's

10 concern.

11 Q All right. Now you mentioned the citation with

12 the fire marshal, I think, right?

13 A Uh huh. Uh-huh, yes.

14 Q What did you learn about that?

15 A At the time what I knew about it is that there

16 was a, you know, a standard fire drill, and in

17 that, Carol Smith did not exit the building as

18 required by standard procedure and law, and that

19 the fire marshal detected that at the time and

20 issued the school district a citation

21 specifically citing her remaining in the

22 building.

23 Q Did you ask Mr. Gasteier why she didn't exit the

24 building?

25 A I don't recall.

Page 28

1 Q Okay. Is that something that you would have

2 wanted to know?

3 A Again, it was something that happened prior to my

4 being there. It was dealt with at that time. It

5 was not something that I was going to address, it

6 was not something that happened under my time

7 frame as superintendent, so I did not actually

8 request it.

9 Q So aside from the fact that it's background

10 information, you concluded that it was not

11 something that you could or would rely on in

12 connection with any future disciplinary

13 information?

14 A It was background information. It was certainly

15 a serious offense. But, again, you know, it

16 wasn't something that I was going to ignore if I

17 saw a pattern of behavior out of an employee, but

18 it wasn't something I was going to go back and

19 reinvestigate and, you know, bring back up again

20 at that stage. It was my thought and opinion

21 that whoever was in charge at that time would

22 have addressed it and had taken care of that

23 issue.

24 Q Okay. But I'm not sure you answered my question.

25 My question was, was it something that you felt

7 (Pages 25 to 28)

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Page 29

1 that you would be able to rely upon and take into  
2 account in determining what, if any, future  
3 disciplinary action might be appropriate or was  
4 it something that you only considered background  
5 information and that's why you didn't go into any  
6 more detail?

7 MS. GRIGSBY: Objection. Asked and  
8 answered.

9 THE WITNESS: I use all background  
10 information as a reference for future discipline  
11 if there's a pattern of behavior, so it certainly  
12 was both, sir.

13 BY MR. BELAZIS:

14 Q Okay. So fair enough. So then at any point, in  
15 connection with any disciplinary action that you  
16 took against Mrs. Smith, did you inquire about  
17 why Mrs. Smith did not go out of the building  
18 during that fire marshal -- or during that fire  
19 drill?

20 MS. GRIGSBY: Objection. Asked and  
21 answered.

22 THE WITNESS: Not that I recall.

23 BY MR. BELAZIS:

24 Q Okay. If it's something that you're going to  
25 rely upon in making a determination of future

Page 31

1 MS. GRIGSBY: Objection.

2 THE WITNESS: In the time frame that it  
3 happened and given the fact that it was over a  
4 year old, no, it was irrelevant to me at that  
5 stage.

6 BY MR. BELAZIS:

7 Q And maybe I already asked you this, did you at  
8 any point find out the reason that Mrs. Smith  
9 failed to exit?

10 MS. GRIGSBY: Objection. Asked and  
11 answered.

12 THE WITNESS: I've heard multiple  
13 reasons why she failed to exit.

14 BY MR. BELAZIS:

15 Q And at what point did you finally start hearing  
16 multiple reasons?

17 A I don't know, sir. I honestly don't know.

18 Q Did you at any point become aware that Carol  
19 Smith suffered from diabetes?

20 A Yes.

21 Q And when did you first learn of that?

22 A When I received a letter from her attorney at the  
23 time, Thomas Zraik, informing me of that fact.

24 Q Let me just go back for a second. During that  
25 initial incident when you got a call from Mr.

Page 30

1 discipline, is the reason for her failure to exit  
2 of any consequence to you?

3 A At that stage, sir, no.

4 Q So if she was sick, for example, and couldn't  
5 leave the building because she was sick, that  
6 wouldn't matter to you?

7 A You're posing hypotheticals.

8 Q Well, that's fine. Let's assume it's a  
9 hypothetical. But if she were sick and she  
10 couldn't leave the building because of some  
11 medical condition, that wouldn't matter to you?

12 MS. GRIGSBY: Objection.

13 THE WITNESS: Sir, it wasn't the case;  
14 she wasn't sick.

15 BY MR. BELAZIS:

16 Q I'm just -- I'm asking you a question and the  
17 question you can answer either yes or no. I  
18 don't want you to speculate about whether she was  
19 or whether she wasn't. I'm just asking you a  
20 question. If her failure to leave was because of  
21 a medical condition, is that something that you  
22 would want to know?

23 MS. GRIGSBY: Objection.

24 BY MR. BELAZIS:

25 Q Yes or no.

Page 32

1 Finn?

2 A Yes, sir.

3 Q You already explained that you spoke with Mr.  
4 Gasteier?

5 A Uh-huh.

6 Q Did Mr. Gasteier ever bring to your attention at  
7 that point in time that he had been approached by  
8 Mrs. Smith and that she had explained to him that  
9 she had heard rumors that she was sleeping and  
10 that she was not -- and to the extent that she  
11 appeared to be sleeping was because of an eye  
12 condition?

13 A No, sir, not at that time.

14 MR. BELAZIS: Excuse me one second.  
15 (Off the record.)

16 BY MR. BELAZIS:

17 Q Mr. Gunner, you're familiar with diabetes and you  
18 have some personal familiarity with it?

19 A Yes, sir.

20 Q And I understand you have a daughter who is  
21 diabetic?

22 A Yes, sir.

23 Q So I suspect that you have studied the condition  
24 for that reason pretty carefully?

25 A No, sir.

8 (Pages 29 to 32)

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Page 33

1 Q Okay.  
 2 A Like I say, my wife has studied the condition  
 3 very carefully.  
 4 Q You understand though at least that if the  
 5 condition is not controlled, that the person  
 6 suffering from it can have excessive highs or  
 7 excessive lows in their blood sugar?  
 8 A Yes, I do understand that.  
 9 Q And you understand that it's typically a chronic  
 10 condition; in other words, it's one that usually  
 11 may not go away, right?  
 12 A Especially, I mean, there are multiple types of  
 13 diabetes. Type 1, the pancreas shuts down  
 14 completely, does not go away. Type 2, there's  
 15 sometimes it can be completely controlled through  
 16 diet and exercise. It's not, the two types of  
 17 diabetes are entirely different.  
 18 Q And your daughter's?  
 19 A Is Type 1.  
 20 Q Okay. And in the case of Type 1, that doesn't go  
 21 away as you said?  
 22 A Uh-huh.  
 23 Q Okay. And if not, if blood sugars are not  
 24 controlled, they can have a number of adverse  
 25 effects on other body systems; is that correct?

Page 34

1 MS. GRIGSBY: With respect to what  
 2 type?  
 3 BY MR. BELAZIS:  
 4 Q Type 1.  
 5 A Yes. Understand, I'm no medical expert.  
 6 Q I'm just asking about your understanding.  
 7 A Yes.  
 8 Q And are you familiar with neuropathy?  
 9 A Yes.  
 10 Q And what is that?  
 11 A My understanding is neuropathy is damage to the  
 12 nerve endings, typically either in the  
 13 extremities, so typically fingers and toes and  
 14 the feet.  
 15 Q Okay. And if someone has a long-term  
 16 uncontrolled diabetic conditions, that's one of  
 17 the consequences potentially of neuropathy, is  
 18 that correct?  
 19 MS. GRIGSBY: Again, his understanding.  
 20 THE WITNESS: My understanding is that  
 21 that could be one of the consequences, yes.  
 22 BY MR. BELAZIS:  
 23 Q And neuropathy can be a painful condition; is  
 24 that your understanding?  
 25 A It is my understanding, yes.

Page 35

1 Q And to the extent it's in your lower extremities,  
 2 in other words, in your feet, it can impair your  
 3 mobility; is that your understanding?  
 4 A That, I don't know, sir.  
 5 Q Would you assume if you had a painful condition  
 6 in your lower extremities, it might impair your  
 7 abilities --  
 8 A Again, I don't know.  
 9 MS. GRIGSBY: Objection.  
 10 BY MR. BELAZIS:  
 11 Q I'm asking about whether that makes sense to you.  
 12 A I guess it would determine where and how much  
 13 pain and whether it does or doesn't, I don't  
 14 know.  
 15 Q But it could, right?  
 16 MS. GRIGSBY: Objection.  
 17 THE WITNESS: There is a lot of things  
 18 that could happen, sir.  
 19 BY MR. BELAZIS:  
 20 Q Okay. This was a pretty simple question. If the  
 21 pain was severe enough as a result of the  
 22 neuropathy that was in a diabetic individual, it  
 23 could impair mobility, is that fair enough?  
 24 MS. GRIGSBY: Objection.  
 25 THE WITNESS: Again, I've answered that

Page 36

1 question.  
 2 BY MR. BELAZIS:  
 3 Q Would you agree; would that be a fair conclusion?  
 4 MS. GRIGSBY: Objection. Asked and  
 5 answered.  
 6 THE WITNESS: No, I would not agree  
 7 that's a fair conclusion.  
 8 BY MR. BELAZIS:  
 9 Q Okay. Why not?  
 10 A Because there's a lot of different issues that go  
 11 into that. The severity of the pain, the  
 12 location of the pain, the tolerance of the pain  
 13 in that individual, and I think you can  
 14 ultimately say that that's the case.  
 15 Q So all of those things could come into play?  
 16 A Absolutely.  
 17 Q And depending on some of the answers to those  
 18 questions, it would determine whether or not it  
 19 might impair mobility; is that right?  
 20 MS. GRIGSBY: Objection.  
 21 THE WITNESS: Again, no, I wouldn't say  
 22 that either. You know, just because a person is  
 23 in pain does not mean that it impairs their  
 24 ability for mobility.  
 25 BY MR. BELAZIS:

9 (Pages 33 to 36)

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Page 37

1 Q Okay. When did you meet Mrs. Smith?  
 2 A I think I told you, I believe I met her the night  
 3 of the Meet the Superintendent, briefly at the  
 4 end of the presentation when I was greeting  
 5 hundreds of people from the community. I believe  
 6 she was there that evening.  
 7 Q Okay. And when did you see her again?  
 8 A I don't recall when the next meeting would have  
 9 been. You know, I'm in and out of the buildings  
 10 all the time. I could have run into her on a  
 11 variety of occasions in the building. I don't  
 12 recall any specific follow-up meeting or  
 13 follow-up interaction with her.  
 14 Q When was the first time you met with her?  
 15 A Again, I answered that. The first time I met  
 16 with her would have been the evening of the --  
 17 Q I'm sorry?  
 18 A The superintendent.  
 19 Q Outside of that.  
 20 A Again, I don't recall the next time I would have  
 21 met with her.  
 22 Q I mean, in a formal meeting.  
 23 A If you're talking about in a formal meeting that,  
 24 you know, that would have entailed, you know, a  
 25 formal sit-down discussion, that would have been

Page 38

1 in this disciplinary process.  
 2 Q And which one in particular?  
 3 A The meeting with Mr. Zraik I believe would have  
 4 been the first time I formally met her.  
 5 Q Did you, I assume, note Mrs. Smith's obesity  
 6 during the times that you saw her?  
 7 A Again, I'm no medical expert. I don't know the  
 8 official medical definition of obesity. Did I  
 9 notice that she was heavy, was overweight, yes,  
 10 that's obvious.  
 11 Q Okay. Did you detect any mobility impairments  
 12 during the times that you saw her; in other  
 13 words, any difficulty walking?  
 14 A No.  
 15 Q Did you make any effort to observe her walking?  
 16 A No, I had no reason to.  
 17 Q When you first became superintendent, one of your  
 18 jobs is to evaluate the principals?  
 19 A Yes.  
 20 Q And do you recall when you first met with your  
 21 principals to evaluate them after becoming  
 22 superintendent?  
 23 A No, sir.  
 24 Q There's a -- I saw one of your board notes  
 25 referring to meetings that you had for sort of

Page 39

1 preliminary evaluation purposes in the fall of  
 2 2009, do you recall that?  
 3 A No, sir.  
 4 Q Do you recall any concerns that you had about any  
 5 of your principals early in your administration?  
 6 MS. GRIGSBY: Paul, your last question  
 7 referred to 2009, was that what you intended?  
 8 MR. BELAZIS: Uh-huh.  
 9 MS. GRIGSBY: Okay. And now your  
 10 question is?  
 11 BY MR. BELAZIS:  
 12 Q Did you have any concerns about any of your  
 13 principals, and particularly Mr. Finn or Mr.  
 14 Gasteier, did you express to them early in your  
 15 administration?  
 16 A Yes.  
 17 Q What were they?  
 18 A In particular, all principals, I think I set an  
 19 expectation and the tone that, to use my, I think  
 20 the words I used at the time, were they needed to  
 21 be brutally honest in their evaluations. And  
 22 looking at brief evaluations from the principals,  
 23 I felt that they were giving the evaluation  
 24 process sort of a cursory part of their job, that  
 25 they were rubber-stamping everybody as an

Page 40

1 effective, or at least acceptable teacher in all  
 2 categories, in all areas as well as not just  
 3 teachers, their evaluations of other employees.  
 4 And I indicated that nobody is perfect, and that  
 5 it's my expectation that your evaluations are  
 6 honest, and that if there are concerns about  
 7 employees, that you document those concerns, and  
 8 you document ways that you can work with that  
 9 employee to improve in those areas. When we had  
 10 that conversation or when that expectation was  
 11 laid out, I can't tell you that, I don't recall  
 12 exact day. And it was probably multiple times as  
 13 we talked about evaluation process.  
 14 Q What made you think that they were  
 15 rubber-stamping?  
 16 A Some of it was a conversations with the board  
 17 about their feelings when they hired me in terms  
 18 of that we weren't -- we weren't holding all of  
 19 our employees to high expectations. Some of it  
 20 was looking through evaluations and reviewing  
 21 previous evaluations where every single mark on  
 22 an employee is marked as, you know, the exact  
 23 same category, it meets expectations. There were  
 24 no differentiations from one category to another,  
 25 and in the teachers evaluations there were, I

10 (Pages 37 to 40)

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Page 41

1 don't know, 40 or 50 different line items you had  
 2 to evaluate a teacher on. So when they are all  
 3 consistently marked the same, that concerns me.  
 4 They weren't really paying attention to the  
 5 individual themselves, when, you know, every  
 6 teacher in evaluations, that are done are all  
 7 marked that exact same way. There's no  
 8 differentiation between one teacher and another,  
 9 and there's no differentiation with any teacher  
 10 of skills where they may be better at some skills  
 11 and need work or improvement on other skills.  
 12 Q Okay. So that's an expectation that you  
 13 articulated to administrators?  
 14 A Very early in my career, you say 2009, I'm sure,  
 15 but it was an expectation that was, you know,  
 16 repeated every year as we would talk about and  
 17 get ready for the next year's evaluations.  
 18 Q You made clear to them from the very beginning  
 19 that that was your expectation?  
 20 A Yes.  
 21 Q And I take it you also made clear to them that  
 22 they would be evaluated themselves on whether or  
 23 not they followed that directive?  
 24 A That is correct.  
 25 Q Oh, here we go. You're right, I just spoke --

Page 42

1 MS. GRIGSBY: Yes, I thought.  
 2 MR. BELAZIS: Let's mark that.  
 3 (Plaintiff's Exhibit 26 was marked and attached.)  
 4 THE WITNESS: I would have been  
 5 surprised if it wasn't in 2008, on this issue.  
 6 BY MR. BELAZIS:  
 7 Q Okay. You have been handed what's marked as  
 8 Plaintiff's Exhibit, what is that, 26?  
 9 A Yes, sir.  
 10 Q And you may note that you have scheduled  
 11 evaluation meetings on the last page for Mr.  
 12 Gasteier, Mr. Miller, Mr. Finn. Those are all  
 13 administrators, at least Mr. Gasteier and Mr.  
 14 Finn, right?  
 15 A Yes, and Ms. Miller. She's our food service  
 16 supervisor.  
 17 Q Okay.  
 18 A And Mr. Strohl is our athletic director,  
 19 considered administrator as well, and Ms.  
 20 Leffler, all of those.  
 21 Q So this would have been the first opportunity you  
 22 had to convey those thoughts that you just  
 23 remarked about earlier?  
 24 A No, I don't know that I would say the first. I  
 25 may have conveyed them earlier as well. But

Page 43

1 certainly I would have conveyed them again  
 2 one-to-one in these pre-evaluation meetings.  
 3 MS. GRIGSBY: Do you have another copy?  
 4 MR. BELAZIS: Oh, I beg your pardon?  
 5 MS. GRIGSBY: Yes.  
 6 MR. BELAZIS: Yes, I do.  
 7 MS. GRIGSBY: Thank you.  
 8 BY MR. BELAZIS:  
 9 Q How was it that you happened to review  
 10 evaluations?  
 11 A Well, part of my hiring process, the board raised  
 12 the issue of, you know, an expectation to raise  
 13 the overall competency level of our staff, and  
 14 that the brochure that they sent out advertising  
 15 for the position talked about taking a good  
 16 district to a great district, and in our  
 17 conversations about what they mean there. As a  
 18 board they articulated to me that part of it was  
 19 holding all staff to high expectations and  
 20 holding staff accountable when they didn't live  
 21 up to those expectations. So part of my  
 22 preparation and review for that process was to  
 23 begin to look at the personnel files and how we  
 24 evaluated staff in the past and what forms were  
 25 we using in what were sort of the historical

Page 44

1 patterns of evaluation.  
 2 Q And did you begin reviewing personnel files in  
 3 the summer after you were hired? In other words,  
 4 when did you start reviewing them?  
 5 A Almost immediately. I look at personnel files on  
 6 a regular basis.  
 7 Q And in terms of evaluations, you pulled the  
 8 evaluations and began reviewing those, I take it,  
 9 from what you described?  
 10 A I would have -- I wouldn't use the word pull, I  
 11 would take an employee's personnel file and I  
 12 would scan through it looking at, in particular,  
 13 the evaluation that they had undergone, and  
 14 anything, any other letters or anything else that  
 15 were in there that may have been of interest.  
 16 Normally those were the things I was looking at.  
 17 Q Was there any record of evaluations? Who has  
 18 been evaluated that is maintained other than the  
 19 hard copy that's in the personnel file?  
 20 A Not that I'm aware of.  
 21 Q Okay.  
 22 MR. BELAZIS: Off the record for a  
 23 second.  
 24 (Off the record.)  
 25 (Plaintiff's Exhibit No. 3 was referred to.)

11 (Pages 41 to 44)

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Page 45

1 BY MR. BELAZIS:  
 2 Q Handing you what's been marked as Plaintiff's  
 3 Exhibit No. 3.  
 4 A Okay.  
 5 Q You're referred to a series of incidents that had  
 6 occurred when you were contacted by Mr. Finn; is  
 7 that correct?  
 8 A Yes, in September of 2008.  
 9 Q Okay. And I think you said there were four; is  
 10 that right?  
 11 A Yes.  
 12 Q And the documents that are a part of Plaintiff's  
 13 Exhibit 3 are the disciplinary related documents  
 14 that were issued by you in connection with that  
 15 series of events, right?  
 16 A Some of them are disciplinary, some of them are  
 17 related to requests for accommodations.  
 18 MS. GRIGSBY: You're referring to both  
 19 Exhibit 3 and 4?  
 20 MR. BELAZIS: Is there a 4?  
 21 THE WITNESS: I'm sorry. So 3 is just  
 22 these pages then?  
 23 BY MR. BELAZIS:  
 24 Q Yes.  
 25 A Then, yes, these two letters are in reference to

Page 46

1 the disciplinary conditions for those four  
 2 incidents.  
 3 Q Okay. And let me look at it. Were you present  
 4 for this disciplinary conference?  
 5 A No, I was not.  
 6 Q Did you ever talk to Mrs. Smith about it in the  
 7 course of these disciplinary proceedings?  
 8 A No.  
 9 Q Referenced by Plaintiff's Exhibit No. 3?  
 10 A I had a conversation with Mrs. Smith and Mr.  
 11 Zraik regarding accommodations that referenced  
 12 these four incidents, but I was not involved in  
 13 that meeting, nor the discipline that was issued.  
 14 Q Well, I think you said that Mr. Finn contacted  
 15 you about --  
 16 A Uh-huh.  
 17 Q -- these incidents?  
 18 A Yes, we had conversations, yes.  
 19 Q And did you offer input into the discipline that  
 20 should be taken based on what he told you?  
 21 A No, Mr. Finn made the decision afterwards that  
 22 the first step in the negotiating agreement with  
 23 teachers would be -- let me backtrack for a  
 24 minute.  
 25 Yes, I did because I had informed him

Page 47

1 that, you know, that there were verbal  
 2 conversations regarding similar incidents at the  
 3 high school the previous year, so that if he felt  
 4 that the accusations were accurate, that the next  
 5 phase would be a written reprimand versus verbal.  
 6 So we did have a conversation like that.  
 7 Q Okay. So that was what you advised him what you  
 8 just described?  
 9 A Right. I didn't direct him to get a written  
 10 reprimand. The conversation focused on that if  
 11 he felt the circumstances warranted discipline,  
 12 then the accusations had merit, that the  
 13 appropriate stage would be a written reprimand.  
 14 Q What were the accusations from the previous year  
 15 that you were aware of?  
 16 A Again, we previously discussed those. The  
 17 failure to leave the classroom during the fire  
 18 drill, and also the previous accusations from Mr.  
 19 Dahlman of finding Mrs. Smith asleep at one time.  
 20 Q Okay. During a previous school year you're  
 21 talking about?  
 22 A A previous year. I don't know that that took  
 23 place in '07-'08, I just know that there was  
 24 reference to that in a previous year. When that  
 25 was, I do not know.

Page 48

1 Q And had you spoken to Mr. Dahlman about that  
 2 particular incident?  
 3 A Mr. Dahlman and I had numerous conversations. I  
 4 don't know.  
 5 Q At that point in time, in other words, prior to  
 6 this conversation you had with Mr. Finn about  
 7 what disciplinary action to take, had you spoken  
 8 to Mr. Dahlman about that incident involving the  
 9 previous year?  
 10 A Yes. Yes, I was aware of that incident prior to  
 11 informing Mr. Finn that the appropriate  
 12 disciplinary step based on previous incidents  
 13 would be at least a written reprimand.  
 14 Q I understand that you are aware, but you told me  
 15 Mr. Gasteier had made you aware; is that correct?  
 16 A No, I had spoken to both Mr. Gasteier and Mr.  
 17 Dahlman both.  
 18 Q And what exactly did Mr. Dahlman tell you?  
 19 A Sir, I can't really remember. He had referenced  
 20 multiple concerns and multiple issues related to  
 21 his interactions with Mrs. Smith in previous  
 22 years. One of them being at one time finding her  
 23 asleep.  
 24 Q And can you give me any details about how he knew  
 25 that she was asleep?

12 (Pages 45 to 48)

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Page 49

1 A Again, all that I recall in the conversation is  
2 that he walked into her classroom and she was at  
3 her desk asleep.  
4 Q And can you tell me how he knew that she was  
5 asleep?  
6 A No, sir. You would have to ask him that.  
7 Q Did you ask him that?  
8 A No, sir. I took his word that when he said she  
9 was asleep that she was asleep.  
10 Q Do you know whether Mrs. Smith was asked about  
11 that?  
12 A I do not.  
13 MS. GRIGSBY: Objection.  
14 BY MR. BELAZIS:  
15 Q Okay. Did you give any direction to Mr. Finn to  
16 ask her about that?  
17 A No, I did not. Again, it was previous year, I  
18 assume that it had been dealt with by the  
19 previous administration.  
20 MS. GRIGSBY: Can we take just a  
21 two-minute break?  
22 MR. BELAZIS: Sure.  
23 (Off the record.)  
24 BY MR. BELAZIS:  
25 Q Okay. Other than this incident involving Mr.

Page 50

1 Dahlman that you have already referred to, were  
2 there any other incidences, and of course you  
3 mentioned the fire drill incident?  
4 A Uh-huh.  
5 Q Other than those two things, were there any  
6 others that you were referring to a moment ago  
7 when you referenced incidences from the previous  
8 year?  
9 A I was aware of a conversation with Mr. Dahlman  
10 that --  
11 Q You mean other incidences from conversations with  
12 Mr. Dahlman?  
13 A No. And, again, this general conversation, it  
14 may have been more than one conversation with him  
15 at that time, that he had an incident with Mrs.  
16 Smith where he had a concern over a particular  
17 movie that she had shown in class and whether she  
18 had followed proper procedures in obtaining  
19 permission to show that movie.  
20 Q Which movie was that?  
21 A I believe it was a movie titled "Witness."  
22 Q Okay.  
23 A I'm aware that Mr. Dahlman also had an incident  
24 with Mrs. Smith as he was leaving her classroom  
25 after a conversation with her, that she made a

Page 51

1 derogatory comment about Mr. Dahlman that he was  
2 aware was made and confronted her and she  
3 admitted to making, that he turned it over to Mr.  
4 Dahlman.  
5 Q What?  
6 A I don't remember the exact word or words, but it  
7 was --  
8 Q How do you know it was derogatory?  
9 A Just, that's my recollection in talking to Mr.  
10 Dahlman.  
11 Q Okay.  
12 A It was something certainly that you would not say  
13 to your supervisor that he took offense to.  
14 Q Was that documented in her personnel file?  
15 A No, sir, it was not.  
16 Q Okay. Anything else?  
17 A There may have been a couple of other minor  
18 things, but I don't recall instances.  
19 Q Okay. Did you draw any conclusions prior to the  
20 time that -- well, prior to the time -- strike,  
21 withdraw that question.  
22 Prior to the time that you spoke with  
23 Mr. Finn about this disciplinary action that you  
24 and he discussed, had there been any discussion  
25 about Ms. Smith's diabetic condition?

Page 52

1 A No, sir, not that I'm aware of.  
2 Q Okay. So at some point you got a letter from Mr.  
3 Zraik; is that right?  
4 A Yes. Multiple letters from Mr. Zraik.  
5 Q All right. And he brought up the issue of her  
6 diabetic condition; is that right?  
7 A Yes, sir.  
8 Q Now, if you look at the second page of what's  
9 been marked as Exhibit 3.  
10 A Yes, sir.  
11 Q In the next to the last paragraph Mr. Finn refers  
12 to the fact that, during the conference, the  
13 question of Ms. Smith's diabetes came up as an  
14 issue, right?  
15 A He indicates that, yes.  
16 Q Okay. Did Mr. Finn make you aware of that?  
17 A I received a copy of this letter.  
18 Q Did you speak with Mr. Finn between the time that  
19 this September 29, 2008 letter, in other words,  
20 the first page of Exhibit 3, was issued and the  
21 October 6, 2008?  
22 A Yes. I'm normally in conversations with my  
23 principals almost daily.  
24 Q Okay. So sometime in between that, those two  
25 letters, did you discuss the question of Ms.

13 (Pages 49 to 52)

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Page 53

1 Smith's diabetes?  
 2 A No, sir.  
 3 Q Did he make you -- I assume you became aware that  
 4 her diabetes was an issue?  
 5 A When I received this letter.  
 6 Q Which one?  
 7 A The one dated October 6th, and also about the  
 8 same time I received the letter from Thomas  
 9 Zraik.  
 10 Q Okay.  
 11 A They both came about, I can't guarantee the same  
 12 day, but pretty close to the same day.  
 13 Q Prior to that time, Mr. Finn had not said  
 14 anything to you about diabetes being an issue in  
 15 the conduct for which Mrs. Smith was being  
 16 considered for discipline?  
 17 A Not that I recall.  
 18 Q Would you consider that an important factor if  
 19 he's going to discuss with you potential  
 20 disciplinary action?  
 21 A I certainly think it is. I think he addressed it  
 22 in the letter.  
 23 Q Would you have given him any different  
 24 information about your own conclusions if you had  
 25 known about the diabetes issue?

Page 54

1 A It depends on my -- what do you mean by my own  
 2 conclusion?  
 3 Q Well, you described earlier the views that you  
 4 imparted, that you imparted to Mr. Finn about  
 5 what disciplinary action might be appropriate  
 6 under the circumstances.  
 7 A Uh-huh.  
 8 Q My question is, would that have been any  
 9 different if you had known about the issue of  
 10 diabetes?  
 11 MS. GRIGSBY: Objection. Calls for  
 12 speculation.  
 13 THE WITNESS: If, in Mr. Finn's  
 14 opinion, she was actually sleeping and not  
 15 supervising kids during one or more of these  
 16 instances, that she was not fully awake and fully  
 17 aware of the responsibility she has in a  
 18 classroom, then she needed to be held accountable  
 19 for that as a disciplinary issue. If, what  
 20 caused that was diabetes and/or a medical  
 21 condition, then we are willing, and he offered,  
 22 the opportunity to sit down and discuss that  
 23 medical condition and to make an opportunity for  
 24 her to take a leave if necessary to get better  
 25 for that.

Page 55

1 (Plaintiff's Exhibits 4 and 5 were referred to.)  
 2 BY MR. BELAZIS:  
 3 Q Okay. Now let's go to Exhibit 5. I'm sorry,  
 4 Exhibit 4. You've already referenced that you  
 5 received some letters from Mr. Zraik advising  
 6 that Mrs. Smith suffered from diabetes, correct?  
 7 A Yes.  
 8 Q And he explains in that correspondence, which I  
 9 have now handed to you.  
 10 A Yes.  
 11 Q That, in fact, she may appear to be sleeping when  
 12 she is not is a secondary consequence of her  
 13 diabetic condition; is that right?  
 14 MS. GRIGSBY: Are you referencing a  
 15 particular part of the letter?  
 16 THE WITNESS: Please, yes.  
 17 BY MR. BELAZIS:  
 18 Q Let's have a look. Let's look, for example, at  
 19 her letter of October 14, 2008. He says, "At  
 20 times," in the second full paragraph. "At times,  
 21 particularly when she is experiencing any  
 22 elevated blood sugar, Mrs. Smith may appear to be  
 23 sleeping even though she is awake and fully aware  
 24 of her surroundings?" Do you see that?  
 25 A Let me see what he says in the letter, yes.

Page 56

1 Q Okay. So that letter was directed to you; is  
 2 that right?  
 3 A This one is directed to Principal Finn.  
 4 Q But you got a copy of it?  
 5 A I believe so, yes, because it went in her,  
 6 Carol's personnel file.  
 7 Q Okay. And, in fact -- well, here. He sent the  
 8 letter at the same time, also dated October 15th  
 9 to you, and he says the same thing, right?  
 10 "Because of her elevated blood sugar may at times  
 11 appear to be sleeping even though she is fully  
 12 awake and aware of her surroundings," right,  
 13 that's what it says?  
 14 A That is what he says in the second, the end of  
 15 the second paragraph, yes.  
 16 Q Okay. Now, and you got a copy of that letter,  
 17 right?  
 18 A Yes.  
 19 Q Okay. So once that was brought to your  
 20 attention, what, if anything, did you do to  
 21 determine whether or not the incidences of which  
 22 Mrs. Smith was being accused as laid out in  
 23 Exhibit 3, the September 29, 2008 letter, where,  
 24 in fact, it appears in which she was suffering  
 25 from an elevated or excessively low blood sugar,

14 (Pages 53 to 56)

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Page 57

1 and whether, in fact, she was fully alert?  
 2 A I had a conversation with Mr. Finn regarding his  
 3 investigation and also the conversation during  
 4 the disciplinary hearing that he held. It is my  
 5 recollection that on two of the three occasions  
 6 that are referenced in the letter, Mr. Finn  
 7 himself personally witnessed her sleeping and was  
 8 sure that she was sleeping. And on a third  
 9 occasion, Mr. Quizno, who was the assistant  
 10 principal, witnessed her sleeping and was  
 11 positive that she was sleeping, that she wasn't  
 12 simply resting her eyes as this alludes to. And  
 13 then on a fourth occasion, a teacher was positive  
 14 she was sleeping and not simply resting her eyes.  
 15 So given that information, I felt the  
 16 disciplinary action taken by Mr. Finn was  
 17 warranted.  
 18 Q Okay. Did you personally speak with Mr. Quizno  
 19 about that?  
 20 A Mr. Quizno?  
 21 Q Uh-huh.  
 22 A I have, I don't know in that time frame.  
 23 Q Okay.  
 24 A Certainly since then I have. I don't know that I  
 25 can swear that I have spoken to him at that time.

Page 58

1 Q And the teacher, who was the teacher?  
 2 A Danielle Fahning if I remember correctly.  
 3 Q And did you personally talk with the teacher?  
 4 A No, I did not.  
 5 Q But from your point of view, the teacher had  
 6 express absolute certainty that Mrs. Smith was  
 7 sleeping?  
 8 A My conversation with Mr. Finn, he was positive  
 9 himself, he shared with me that Mr. Quizno was  
 10 positive, and he shared with me that in his  
 11 conversation with the teacher, the teacher was  
 12 positive that she was sleeping. I did not, at  
 13 that time, recall talking directly to Mr. Quizno  
 14 or to Ms. Fahning.  
 15 MR. BELAZIS: Do you mind if I take  
 16 just a five-minute break?  
 17 MS. GRIGSBY: Sure.  
 18 (Off the record.)  
 19 BY MR. BELAZIS:  
 20 Q Okay. Mr. Gunner, would you agree with me that  
 21 if Mrs. Smith was suffering from a diabetic high  
 22 or a diabetic low and didn't feel good and had  
 23 her eyes closed because of that, that it might be  
 24 difficult for either Mr. Quizno or Mr. Finn to  
 25 determine with certainty whether or not she was

Page 59

1 asleep?  
 2 MS. GRIGSBY: Objection.  
 3 THE WITNESS: No, I do not.  
 4 BY MR. BELAZIS:  
 5 Q Why is that?  
 6 A Again, in my conversation with Mr. Finn, he  
 7 walked into the classroom, walked over to where  
 8 her desk was, she never made any acknowledgment  
 9 of someone coming into the classroom and, you  
 10 know, did not recognize at all that anybody had  
 11 entered the room. If I'm resting my eyes as a  
 12 teacher as she claims and that door opens, I'm  
 13 going to be opening my eyes to clearly see what's  
 14 going on in the classroom, and why somebody has  
 15 entered my room. And the second observation is  
 16 the same thing, in Mr. Quizno's it's the exact  
 17 same. In fact, Mr. Quizno has indicated that he  
 18 walked into the classroom, all the way over to  
 19 her desk, she never moved, and she was way back  
 20 in a sort of a lay-back prone position, eyes  
 21 clearly closed, mouth wide-open, and remained in  
 22 that position the entire time he walked into the  
 23 room, walked over to her desk, and as he walked  
 24 out and exited the room, never once made any  
 25 acknowledgment that he had been in the room at

Page 60

1 all. So, and if I recall Danielle Fahning's  
 2 comments to Mr. Finn that were relayed to me, it  
 3 was that, you know, at some point after she  
 4 entered the room, that Ms. Fahning -- or Mrs.  
 5 Smith had sort of a startled wake as you would  
 6 wake up from a sleep, and that it was very  
 7 noticeable to Mrs. Fahning, that there was some  
 8 reaction versus simply observing her sleeping.  
 9 Q But you didn't talk to her yourself?  
 10 A I did not. These are conversations I had with  
 11 Mr. Finn.  
 12 Q One of the symptoms of blood sugar that's not  
 13 within the normal range, in other words, when it  
 14 gets either too high or too low, may be  
 15 difficulty concentrating; is that your  
 16 understanding?  
 17 MS. GRIGSBY: Objection.  
 18 THE WITNESS: Again, I'm not a medical  
 19 expert, but it is my understanding that  
 20 sometimes, yes.  
 21 BY MR. BELAZIS:  
 22 Q Okay. So if an individual is experiencing a very  
 23 high or very low blood sugar and is having  
 24 difficulty concentrating and is feeling poorly  
 25 and closing their eyes as a result of that, you

15 (Pages 57 to 60)

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Page 61

1 still think that you would be able to determine  
2 whether or not they are asleep with certainty?  
3 A Given the description of these four incidents and  
4 what took place, yes, I believe it clearly, and  
5 in these circumstances presented to me, it was  
6 clear that she was sleeping.  
7 Q Was there any effort to confer with a medical  
8 professional to determine whether the  
9 observations that any of those individuals made  
10 might be related to a diabetic condition?  
11 A There was later a request and a demand for a  
12 medical evaluation of Mrs. Smith.  
13 Q I'm just talking about at that time, prior to the  
14 time that the disciplinary action was taken  
15 against Mrs. Smith for these four incidents that  
16 you're referring to in Plaintiff's Exhibit No. 3,  
17 was any effort made to confer with a medical  
18 professional to determine whether the  
19 observations which the district was relying in  
20 order to impose the disciplinary actions might  
21 have been related to Mrs. Smith's medical  
22 condition?  
23 A No, sir.  
24 Q Let's see. It's here somewhere.  
25 A If I could amend that last answer just in the

Page 62

1 following way: The district did offer Mrs. Smith  
2 the opportunity to take a medical examination,  
3 and to take a medical leave of absence should  
4 that be causation for these incidents.  
5 Q Mr. Gasteier, where in that correspondence,  
6 either Exhibit 3 or Exhibit 4, does it refer to a  
7 medical examination with respect to that?  
8 MS. GRIGSBY: Mr. Gunner.  
9 MR. BELAZIS: What did I say?  
10 MS. GRIGSBY: Gasteier.  
11 MR. BELAZIS: Oh, I'm sorry.  
12 THE WITNESS: If you refer to  
13 Exhibit 3, the second letter from, or the letter  
14 from Mr. Finn, and the second to the last  
15 paragraph, second sentence says, "We would  
16 encourage you to seek medical attention for any  
17 condition that may be impacting your ability to  
18 teach and to supervise students effectively. The  
19 Perkins School District will support a medical  
20 leave of absence if prescribed by your treating  
21 physician until such time that your medical  
22 condition would not interfere in your ability to  
23 properly teach and supervisor students."  
24 BY MR. BELAZIS:  
25 Q That's what she was told, right?

Page 63

1 A That was what was offered to her, yes.  
2 Q Now, what's been marked Plaintiff's Exhibit 27,  
3 and do you recognize that?  
4 A Yes.  
5 Q When did you first see it?  
6 A I believe during the termination hearing.  
7 Q Okay. And did Ms. Fahning testify at the  
8 termination hearing?  
9 A I do not recall. I'm not positive.  
10 Q You don't remember her testimony?  
11 A There were multiple teachers who testified. I  
12 don't believe Danielle did, but I'm not positive.  
13 Q She doesn't say anything about Mrs. Smith jumping  
14 with startle as you described, does she?  
15 A No, she does not.  
16 Q She just says she took some time to collect  
17 herself and get up, right?  
18 A It specifically says it took several minutes for  
19 Mrs. Smith to regroup and move along to her seven  
20 period assignment.  
21 Q Do you know what she meant by regroup?  
22 A No, sir, I did not speak to her.  
23 Q And, again, if she was experiencing either a high  
24 or low blood sugar and was feeling poorly and  
25 closed her eyes, would Ms. Fanning be in a

Page 64

1 position to know the difference?  
2 MS. GRIGSBY: Objection.  
3 THE WITNESS: It's my information,  
4 again, through Mr. Finn, and Mrs. Fahning was  
5 emphatic that she was sleeping, and that she was  
6 startled awake, and that's how she knew she was  
7 sleeping, in her conversation with Mr. Finn, that  
8 was what was relayed to me.  
9 BY MR. BELAZIS:  
10 Q Okay.  
11 (Plaintiff's Exhibits 5 and 6 were referred to.)  
12 BY MR. BELAZIS:  
13 Q I want you to have a look at what's been marked  
14 as Plaintiff's Exhibit No. 5.  
15 A Okay.  
16 Q Before we get to that, I'm back to Exhibit 4 for  
17 a moment, the correspondence that you received  
18 from Mr. Zraik, I think it may have been attached  
19 to the letter to Mr. Finn that we talked about a  
20 minute ago on which you were copied, included  
21 some information from Ms. Smith's medical  
22 provider at Northern Ohio Medical Specialists  
23 Health Care; is that correct?  
24 A It was a letter to Mr. -- to the middle school  
25 from Northern Ohio Medical Center regarding Carol

16 (Pages 61 to 64)

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Page 65

1 Smith and diabetes.  
 2 Q Okay. And that was, that accompanied the  
 3 October 14, 2009 letter to Mr. Finn; is that  
 4 correct?  
 5 A Sir, I'm not sure.  
 6 Q Well, there's a reference to it.  
 7 A But Finn may have. I did not receive that  
 8 letter, Mr. Finn did.  
 9 Q Hold on just a second. There's a reference to,  
 10 in the second full paragraph, it says, "See  
 11 attached letter from Certified Nurse  
 12 Practitioner, Michelle Poulos of Northern Ohio  
 13 Medical Specialists," right?  
 14 A Yes, that is it.  
 15 Q Okay. So the letter to Mr. Finn references the  
 16 information from Ms. Poulos that is also part of  
 17 the exhibit, right?  
 18 A Yes.  
 19 Q And you were copied with that same letter; is  
 20 that correct?  
 21 A Yes, I believe I was.  
 22 Q So, you would have received the information from  
 23 Ms. Poulos as well, right?  
 24 A Yes.  
 25 Q And I take it you didn't question Ms. Smith's

Page 66

1 diabetic condition or any of the information that  
 2 was provided by Ms. Poulos?  
 3 A It says, "Your blood sugars have been fairly well  
 4 controlled over the past several years."  
 5 Q Okay. Now, Ms. Poulos also indicates that, "When  
 6 sugars are too high she may become lethargic and  
 7 disoriented; when it's too low, may sweat, shake  
 8 and experience mood changes or irritability." Do  
 9 you see that?  
 10 A Yes, sir.  
 11 Q All right. And she also indicates, "Please be  
 12 aware that she, Mrs. Smith, may experience some  
 13 of the above symptoms." Do you see that?  
 14 A Yes, sir.  
 15 Q And you didn't have any reason to question that,  
 16 did you?  
 17 A No, sir.  
 18 Q Okay. And she also indicates that, "If blood  
 19 sugars are too low, Mrs. Smith may sweat, shake  
 20 and experience" -- I'm sorry, we already went  
 21 through that.  
 22 Okay now, so let's go back to Exhibit  
 23 5. Tell me what that is, please.  
 24 A Exhibit 5 contains two letters that I wrote. The  
 25 first one is requesting Mrs. Smith to appear at a

Page 67

1 disciplinary conference on Tuesday, March 31st,  
 2 and the second one is giving her my results after  
 3 having met with her on the disciplinary meeting  
 4 on March 31st.  
 5 Q Okay. Tell me what the issue was.  
 6 A February 25th, Mrs. Smith failed to show up at  
 7 middle school for part of her assigned duties in  
 8 the afternoon. She was seen in her car in the  
 9 parking lot by a custodian, and the second letter  
 10 basically confirms that she admits that she  
 11 missed part of her assigned duties and it was her  
 12 fault, and that I issued her a three-day  
 13 suspension without pay and the dates of those,  
 14 the suspension notice.  
 15 Q Okay. Did you personally meet with Mrs. Smith  
 16 with this?  
 17 A Yes, I did.  
 18 Q What did she explain to you?  
 19 A She had explained to me that she had gotten  
 20 confused over the schedule between the high  
 21 school and the middle school that day and as a  
 22 result missed her assigned duties at the middle  
 23 school.  
 24 Q Okay. Did she explain to you how or why she got  
 25 confused?

Page 68

1 A My recollection was this was a two-hour delay, or  
 2 a two-hour early dismissal day, so the schedules  
 3 are slightly different, and though we had had at  
 4 least three or four of these previous to this  
 5 day, so this wasn't a unique or new situation for  
 6 Mrs. Smith, but because of that she said she got  
 7 confused on when she was supposed to be at the  
 8 middle school.  
 9 Q Okay. Did she tell you anything about her -- any  
 10 recent medical procedures that she had had?  
 11 A She did not.  
 12 Q Did she tell you that she had just returned from  
 13 bariatric surgery?  
 14 A No, she did not.  
 15 Q Did you learn that information from anyone else?  
 16 A At some point I did not -- I can't tell you  
 17 exactly when.  
 18 Q Okay. Did you have any idea that Mrs. Smith was  
 19 on any kind of a medical leave?  
 20 A Yes, I knew she had been out.  
 21 Q Okay. And did you find out, did you learn any  
 22 information about when she had returned from her  
 23 medical leave?  
 24 A No, I did not know the exact date of her return.  
 25 Q Did you ask her about any explanation about what

17 (Pages 65 to 68)

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Page 69

1 might have caused her confusion other than the  
2 change in schedule?  
3 A I asked her to explain why she had missed her  
4 assignment in the middle school and that's the  
5 explanation she gave me.  
6 Q Are you familiar at all with bariatric surgery?  
7 A No, sir.  
8 Q Do you know what it is?  
9 A I know it's some sort of medical procedure to  
10 help address obesity. Other than that, I don't  
11 know. I don't know what the procedure is, I  
12 don't know what they do. I just know it's meant  
13 to help address obesity.  
14 Q Okay. And would you agree with me that any kind  
15 of surgery on someone who is 69 or 70 years old  
16 is never very easy?  
17 MS. GRIGSBY: Objection.  
18 THE WITNESS: No, I wouldn't. I've got  
19 a 88-year old father-in-law who has gone through  
20 surgery and who has come out fine.  
21 BY MR. BELAZIS:  
22 Q Okay.  
23 A So, no, it depends on obviously the surgery and  
24 the complications and the overall health and  
25 well-being of that individual.

Page 70

1 Q That's right. And at least some individuals  
2 having surgery may be pretty difficult, right?  
3 MS. GRIGSBY: Objection.  
4 THE WITNESS: There are always  
5 possibilities with surgery of potential problems  
6 and potential difficulties.  
7 BY MR. BELAZIS:  
8 Q When did you find out about the bariatric  
9 surgery?  
10 A I don't remember, sir.  
11 Q Okay. Let's have a look at --  
12 (Plaintiff's Exhibits 6, 7 and 8 were referred  
13 to.)  
14 BY MR. BELAZIS:  
15 Q Would you look at exhibits marked, previously  
16 marked 6, 7 and 8?  
17 A Okay.  
18 Q Are you familiar with these documents?  
19 A Yes, sir.  
20 Q Okay. Tell me what you know about them.  
21 MS. GRIGSBY: Objection. Can you be  
22 more specific in your question?  
23 MR. BELAZIS: If he doesn't understand  
24 the question, he can ask me to clarify.  
25 THE WITNESS: The three documents

Page 71

1 center around the disciplinary conference and  
2 issue of an unpaid ten-day suspension to Mrs.  
3 Carol Smith in June of 2009.  
4 (Plaintiff's Exhibit 6 was referred to.)  
5 BY MR. BELAZIS:  
6 Q Okay. And what, if any, involvement did you  
7 have?  
8 A I had a conversation with Mr. Gasteier prior to  
9 the first letter.  
10 Q The letter?  
11 A Exhibit 6.  
12 Q Okay.  
13 A Mr. Gasteier called me, similar to what we had  
14 discussed similar to Mr. Finn, that some concerns  
15 were raised regarding Mrs. Carol Smith, and he  
16 wanted to be sure he proceeded properly and he  
17 handled it in a manner that, one, met the  
18 contract; two, met the law; and three, met my  
19 expectations.  
20 Q And what were your expectations?  
21 A Similar as I described before, that he needed to  
22 write a written letter to Mrs. Smith, invite her  
23 into a disciplinary hearing, be very clear about  
24 what the infractions were, what the concerns  
25 were, in terms of her violations or disciplinary,

Page 72

1 that might warrant discipline, that he should  
2 make sure that he referenced previous issues,  
3 that he should make sure that he reviewed  
4 previous issues from the middle school that had  
5 happened earlier, and that three, that she was  
6 reminded that she could have a union  
7 representative present, actually, two union  
8 representatives present by contract.  
9 Q Okay. So you had that conversation with Mr.  
10 Gasteier before the June 5, 2009 letter was  
11 issued?  
12 A Yes.  
13 Q And then what, if any, involvement did you have  
14 after that?  
15 A Mr. Gasteier shared a draft of the letter. I  
16 made some --  
17 Q You're referring to the June 5th letter?  
18 A The June 5th letter, the Exhibit 6, I made some  
19 suggestions, slight changes, modifications,  
20 nothing of substance. He subsequently decided  
21 whether to accept those or not in the final  
22 letter. I was then made aware by Mr. Gasteier  
23 that, after the hearing on June 9th, that he felt  
24 that disciplinary action against Mrs. Smith was  
25 warranted, that in his investigation, she had

18 (Pages 69 to 72)

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Page 73

1 been asleep again while supposed to be on  
2 professional duty. There were two other  
3 accusations in the letter that he acknowledged.  
4 There may have been mitigating circumstances that  
5 did not warrant discipline of those other two  
6 references, but certainly he felt discipline was  
7 warranted based upon the sleeping. He felt,  
8 given the previous series of discipline, that the  
9 next step, since she had already been suspended,  
10 would be a suspension at my level, or more  
11 serious, and so his recommendation was to turn it  
12 over to me for actual disciplinary action.

13 Q Okay. And then what actions, if any, did you  
14 take after that?

15 (Plaintiff's Exhibit 7 was referred to.)

16 THE WITNESS: I recommended to Mr.  
17 Gasteier that he send a letter to Mrs. Smith  
18 regarding what he told me articulating exactly  
19 what he told me, and that he -- you know, in  
20 essence referred it to me for a further  
21 suspension or further disciplinary action, which  
22 is the Exhibit 7. At that time, Mr. Gasteier was  
23 out of Ohio if I remember correctly, I believe he  
24 was in California.

25 BY MR. BELAZIS:

Page 75

1 (Plaintiff's Exhibit 8 was referred to.)

2 BY MR. BELAZIS:

3 Q You said, "I believe I had a conversation with  
4 Mr. McVeigh." What do you mean you believe?

5 A I'm sure I did. I don't remember the specific  
6 details of where and when, but I know that I  
7 spoke to Mr. McVeigh about what had happened in  
8 his classroom.

9 Q What did he say?

10 A He indicated that Mrs. Smith was sleeping in his  
11 classroom, that the kids drew attention to her,  
12 they were laughing, they were pointing at her,  
13 that she was, again, thrown back in a chair, head  
14 back, mouth wide-open, eyes closed for an  
15 extended period of time.

16 Q You were at the hearing, at the disciplinary,  
17 termination hearing?

18 A Termination hearing, yes, sir.

19 Q And you heard Mr. McVeigh's testimony?

20 A Yes, sir.

21 Q Do you recall that he testified that Mrs. Smith  
22 was sitting straight up with her eyes closed?

23 MS. GRIGSBY: Objection.

24 THE WITNESS: There were two separate  
25 times Mrs. Smith was in the classroom.

Page 74

1 Q I'm sorry, you're referring to Exhibit 7?

2 A Yes.

3 Q Okay.

4 A Okay. And so he emailed me the narrative of the  
5 letter. I copied it onto district letterhead,  
6 signed on his behalf and noted that I was signing  
7 on his behalf, that this was a letter written  
8 from him to her, but due to the circumstances of  
9 that time frame, my contract, we had to notify  
10 her and he was out of town, that I was signing  
11 the letter as opposed to him. I then reviewed  
12 all the information that Mr. Gasteier had  
13 collected, including several conversations with  
14 him, both while he was in California, and I  
15 believe even after he returned, and specifically  
16 while he was in California. I believe I also had  
17 a conversation with Mr. McVeigh about what he  
18 observed, to confirm what Mr. Gasteier was  
19 telling me as far as the Social Studies classroom  
20 observation of Mrs. Smith sleeping. I then  
21 drafted the June 19th letter, which is Exhibit 8,  
22 where I issued a ten-day unpaid suspension due to  
23 the -- again, sequence of disciplinary actions  
24 that occurred with Mrs. Smith since September of  
25 2008.

Page 76

1 BY MR. BELAZIS:

2 Q Yes.

3 A Asleep and it's my recollection that one of them  
4 he describes as sitting up with her eyes closed  
5 and the other one in the prone position when he  
6 talked to me.

7 Q If I told you that his testimony was that it was  
8 the same thing both times, do you recall that?

9 MS. GRIGSBY: Objection.

10 THE WITNESS: No, I do not recall it.

11 BY MR. BELAZIS:

12 Q But your recollection is that now --

13 A In my conversation with him.

14 Q Based on your belief.

15 MS. GRIGSBY: Wait, wait.

16 MR. BELAZIS: Let me finish my  
17 question.

18 MS. GRIGSBY: Let him finish his  
19 question.

20 BY MR. BELAZIS:

21 Q Let me finish my question. Let me finish my  
22 question and then I'll let you finish yours.

23 Your recollection is, notwithstanding  
24 the sworn testimony during the hearing that he  
25 told you something different, that she was

19 (Pages 73 to 76)

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Page 77

1 leaning back with her mouth open?  
 2 MS. GRIGSBY: Objection. If you're  
 3 going to ask him about the substance of a  
 4 transcript, I would ask that you put the  
 5 transcript before him.  
 6 MR. BELAZIS: Let's have a look at it.  
 7 Okay. We can mark this --  
 8 MS. GRIGSBY: No, that's okay.  
 9 MR. BELAZIS: -- as an exhibit.  
 10 BY MR. BELAZIS:  
 11 Q Let's have a look at, why don't you have a look  
 12 at page 444 of Volume I. You may want to show it  
 13 to --  
 14 MS. GRIGSBY: I'm going to object. I  
 15 think he needs to take time to read the entirety  
 16 of Mr. McVeigh's testimony if you're going to --  
 17 rather than take a portion of it out of context.  
 18 MR. BELAZIS: You can ask him to do  
 19 that, but let's just start with what I'm showing  
 20 him.  
 21 MS. GRIGSBY: And my instruction to you  
 22 is to read the entirety of his testimony before  
 23 you offer any comment on it.  
 24 BY MR. BELAZIS:  
 25 Q You're looking at page 444 of his testimony,

Page 78

1 correct?  
 2 A I am.  
 3 Q What it says in his testimony is she was sitting  
 4 straight up in her chair, is that right, with her  
 5 eyes closed?  
 6 There's a question pending. Is that  
 7 what it says?  
 8 MS. GRIGSBY: He's entitled to review  
 9 it so he can answer the question after he feels  
 10 comfortable doing so. And I would also state an  
 11 objection on the record that obviously the  
 12 transcript and the testimony that's recorded  
 13 there speaks for itself, it doesn't require his  
 14 comment.  
 15 THE WITNESS: Okay.  
 16 MS. GRIGSBY: I think I might have  
 17 forgotten the question.  
 18 BY MR. BELAZIS:  
 19 Q Well, let me ask it again. In his testimony  
 20 during the hearing, which was sworn, Mr. McVeigh  
 21 testifies that he saw Mrs. Smith sitting up in  
 22 her chair with her eyes closed both times, right;  
 23 is that correct?  
 24 MS. GRIGSBY: The document will speak  
 25 for itself. The document says what the document

Page 79

1 says.  
 2 THE WITNESS: His exact words are yes,  
 3 or yay, basically straight up, maybe a little  
 4 slumped backwards.  
 5 BY MR. BELAZIS:  
 6 Q It doesn't say anything about her mouth open,  
 7 right?  
 8 A Not in answering the questions and the testimony  
 9 that day, no.  
 10 Q It doesn't say anything about leaning back in her  
 11 chair, right?  
 12 A Not that I see in the testimony that day.  
 13 Q Do you think he lied to you when he called him  
 14 and talked to him about it?  
 15 A No.  
 16 Q So during this conversation you had with McVeigh,  
 17 was there anything else that was said either by  
 18 you or by him that you can recall?  
 19 A No.  
 20 Q Did you, at any point in connection with this  
 21 disciplinary action, ask Mrs. Smith to provide --  
 22 strike that.  
 23 You were aware that Mrs. Smith had had  
 24 eye surgery by this time; is that right? In  
 25 other words, that she had a medical problem with

Page 80

1 her eyes?  
 2 MS. GRIGSBY: Well, objection to your  
 3 question. What is your question? Is he aware  
 4 that she had eye surgery or is your question that  
 5 she had a medical problem with her eyes?  
 6 BY MR. BELAZIS:  
 7 Q Let me ask it again. At this point in time when  
 8 these disciplinary actions were in process, you  
 9 were aware that Mrs. Smith had a medical problem  
 10 with her eyes?  
 11 A I was made aware during that time by Mr. Gasteier  
 12 as part of his investigation, I believe, on  
 13 June 9th.  
 14 Q Okay.  
 15 A That Mrs. Smith made some reference to eye  
 16 problems, yes.  
 17 Q Okay. And, in fact, you refer to it in your  
 18 letter to here?  
 19 A I believe so, yes.  
 20 Q Imposing discipline, correct?  
 21 A Yes.  
 22 Q Did you, at any point during this process, before  
 23 you issued your disciplinary letter, request that  
 24 Mrs. Smith provide you with medical documentation  
 25 from her treating physician confirming that the

20 (Pages 77 to 80)

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Page 81

1 light sensitivity caused her to close her eyes?  
 2 A No.  
 3 Q Did you disbelieve her assertion that light  
 4 sensitivity caused her to close her eyes?  
 5 A I did not have that assertion made. What I was  
 6 told by Mr. Gasteier, I believe, if I recall  
 7 correctly, is that she was 80 percent blind in  
 8 one eye and had to rest her eyes at times or  
 9 close her eyes at times.  
 10 Q Okay. And did you disbelieve that?  
 11 A No.  
 12 Q Did you ask for any medical documentation to  
 13 confirm her treating physician to confirm that  
 14 fact?  
 15 A No, sir, not at that time. I believe though in  
 16 the ten-day suspension I requested a medical  
 17 evaluation be conducted before she would be  
 18 allowed to return to work.  
 19 Q Okay. Now --  
 20 A And just to amend that, I put that in writing,  
 21 that in the ten-day suspension letter that I  
 22 required her to.  
 23 Q I got that. In your ten-day suspension letter?  
 24 A Exhibit 8?  
 25 Q You demand pursuant to union contract,

Page 82

1 specifically, Article 7.10 that's referenced, as  
 2 you point out in Exhibit 8, you demand or require  
 3 her to undergo a physical examination to  
 4 determine whether she is fit to return to work  
 5 following her suspension, right?  
 6 A Yes, sir.  
 7 Q Okay. And as part of that you sent her to see a  
 8 physician, right, that you picked out?  
 9 A Yes, sir.  
 10 (Plaintiff's Exhibit 28 was marked and attached.)  
 11 BY MR. BELAZIS  
 12 Q All right. You have been handed what's been  
 13 marked as Plaintiff's Exhibit 28. And if you can  
 14 identify that for me, I would appreciate it.  
 15 A This is a letter I sent to a Dr. Larry Kale  
 16 acknowledging his acceptance to do a medical  
 17 evaluation upon Carol Smith.  
 18 Q Okay. And in this letter you provide him  
 19 information that you want him to take into  
 20 account about Mrs. Smith's history, and  
 21 particularly the issue of her sleeping in class  
 22 from your perspective, right?  
 23 A Yes, brief history of what's happened over the  
 24 past year.  
 25 Q And, again, you indicate that what you want to

Page 83

1 know from him is whether Mrs. Smith's medical  
 2 conditions preclude her to continuing to teach at  
 3 this time, that's the task you've assigned to  
 4 him, right?  
 5 A Where are you referencing, sir?  
 6 Q Last paragraph, first sentence.  
 7 A That is correct.  
 8 Q You also indicate up above in the previous  
 9 paragraph on the second page, second line, that  
 10 Mrs. Smith indicates that she gets tired easily.  
 11 Do you see that?  
 12 A Yes, sir.  
 13 Q How did you find that out? Did she tell you?  
 14 A Quite honestly, sir, I don't remember.  
 15 Q Okay.  
 16 A I don't recall.  
 17 Q And what did that mean, she gets tired easily?  
 18 A Again, I don't recall the setting where I was  
 19 informed of that or why I learned of that, so I'm  
 20 not sure exactly what the reference was.  
 21 Q But at some point you found out and thought it  
 22 significant enough to include in your letter to  
 23 doctor --  
 24 A Kale.  
 25 Q Kale, correct.

Page 84

1 A Yes.  
 2 Q By the way, were you aware that Mrs. Smith had a  
 3 handicapped sticker; in other words, that she  
 4 parked in handicap parking at the school?  
 5 A No, sir.  
 6 Q All right. Then, let me see here.  
 7 MR. BELAZIS: I don't know if we marked  
 8 it or not, we are going to mark it now.  
 9 (Plaintiff's Exhibit 29 was marked and attached.)  
 10 BY MR. BELAZIS:  
 11 Q Okay. Are you done reading it?  
 12 A Yes, sir.  
 13 Q So you've seen that before, I take it?  
 14 A Yes, I have.  
 15 Q And that is the report from Dr. Kale in response  
 16 to your response for a Fitness For Duty  
 17 Examination, right?  
 18 A Yes, sir?  
 19 Q And how did you happen to find Dr. Kale, by the  
 20 way?  
 21 A I only had the one phone conversation with his  
 22 office, I never spoke to him directly.  
 23 Q How did you happen to find him?  
 24 A You know, I don't recall. It may have been one  
 25 of my board members who made the recommendation.

21 (Pages 81 to 84)

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Page 85

1 Q Okay. But he was somebody with whom, at least  
2 somebody either you or someone that you trusted,  
3 had confidence, otherwise, you wouldn't have sent  
4 her to him?  
5 A I don't recall conversations with my attorney. I  
6 have a couple board members who are doctors. I  
7 did not select Dr. Kale personally.  
8 Q All I'm asking is you sent her.  
9 A We chose Dr. Kale, yes.  
10 Q The district chose Dr. Kale and sent Mrs. Smith  
11 to see him because someone within the district  
12 had confidence in him?  
13 A That would be accurate. I don't know who that  
14 person is.  
15 Q But you would agree with me that's why he was  
16 selected?  
17 A Yes, I would agree with it.  
18 Q And he was also an expert in occupational  
19 medicine; is that right?  
20 A I don't know.  
21 Q That's his field, isn't it?  
22 A I'm assuming, yes.  
23 Q All right. And you've already told him that in  
24 your letter, that she has been, at least from the  
25 district's point of view, sleeping on six

Page 86

1 separate occasions, right?  
2 A Yes.  
3 Q Okay. And in this letter, or in this report, he  
4 indicates that he was, that Mrs. Smith explained  
5 to him that she was in fact shielding her eyes  
6 from glaring light due to problems that she had  
7 had for several years secondary to an eye  
8 infection in response to the issue of her  
9 sleeping in class; is that right?  
10 A Yes, she makes that claim to him.  
11 Q And she also refers to her difficulty maintaining  
12 her blood sugars; is that right?  
13 A Yes, sir.  
14 Q Now, his conclusion is that she can return to  
15 work, right?  
16 A His conclusion, there wasn't sufficient evidence  
17 to show that she has any current propensity to  
18 fall asleep while supervising and instructing  
19 students, and therefore, I cannot appropriately  
20 recommend removal from her work activities.  
21 Q You've got your own physician here who has  
22 examined her. Did you ever ask him whether, in  
23 his medical opinion, that the need to shield her  
24 eyes from light secondary to her vision problem  
25 would explain the fact that her eyes were closed

Page 87

1 when she was observed by staff that we have been  
2 talking about?  
3 MS. GRIGSBY: Objection.  
4 THE WITNESS: I never had a  
5 conversation with Mr. Kale.  
6 BY MR. BELAZIS:  
7 Q Okay. Now, at this point, again, it's brought to  
8 your attention that, from Mrs. Smith's point of  
9 view, what's going on in addition to her diabetes  
10 is that she is shielding her eyes from glaring  
11 light resulting from problems secondary to an eye  
12 infection; is that right?  
13 A She shared this with the doctor who put it in his  
14 report. This is the first time I was made aware  
15 of that claim by Mrs. Smith.  
16 Q Okay. So whether it's the first time or not,  
17 you're not aware of it by reading this report?  
18 A Correct.  
19 Q You read it when you got it?  
20 A Yes.  
21 Q And having gotten this, did you request any  
22 additional documentation from Mrs. Smith,  
23 documentation from her medical providers,  
24 indicating that it was her eye impairment that  
25 was causing her to close her eyes?

Page 88

1 A No, sir.  
2 Q Now, this also indicates on page 2 -- I'm sorry,  
3 page 3.  
4 MR. BELAZIS: I'm sorry, I think we  
5 have a missing page here. It goes --  
6 MS. GRIGSBY: Yes, you're right.  
7 MR. BELAZIS: That's a problem we have  
8 to correct. Let's go off the record.  
9 MS. GRIGSBY: Okay.  
10 (Off the record.)  
11 BY MR. BELAZIS:  
12 Q So we determined that there was a page missing  
13 from this, and you have had a chance to -- page 2  
14 is missing and now that's been included in the  
15 exhibit and we have had a chance to review that  
16 as well?  
17 A Yes.  
18 Q Okay. And you've revised what you have said so  
19 far about this exhibit, having read page 2?  
20 A I would have to go back and look at the testimony  
21 to know on that.  
22 Q If you look at page 2 -- well, let's go to page 3  
23 of this. Dr. Kale refers to the fact that Mrs.  
24 Smith has suffered from shortness of breath. Do  
25 you see that?

22 (Pages 85 to 88)

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Page 89

1 A The first paragraph, yes.  
 2 Q Right. And he indicates that it's decreased  
 3 substantially because of her efforts to improve  
 4 her health, but it doesn't say it's gone away,  
 5 does it. Has it?  
 6 A He indicates that she says that it's decreased.  
 7 Q Right. And now you're aware of that because  
 8 you've read this, right?  
 9 A Yes.  
 10 Q Okay. And he also indicates under his physical  
 11 examination, same page, next to the last  
 12 paragraph toward the bottom that he found that  
 13 she had slight diminished sensation at the toes,  
 14 do you see that?  
 15 A Yes.  
 16 MS. GRIGSBY: Are you on page 2?  
 17 THE WITNESS: Three.  
 18 BY MR. BELAZIS:  
 19 Q Page 3.  
 20 A Second from the last paragraph, second from the  
 21 last sentence.  
 22 MS. GRIGSBY: Oh, the sentence that  
 23 says, "She has slight diminished sensation at the  
 24 toes, but otherwise normal at the legs."  
 25 BY MR. BELAZIS:

Page 90

1 Q Do you see that?  
 2 A Yes.  
 3 Q And diminished sensation would be consistent with  
 4 neuropathy; is that your understanding of it?  
 5 A I don't know that.  
 6 Q All right. On page 2 she indicates that as a  
 7 result of high blood sugars, she's had a history  
 8 of having very severe headaches, do you see that?  
 9 A Third paragraph down?  
 10 Q Right.  
 11 A Yes.  
 12 Q Do you have any reason to doubt that?  
 13 MS. GRIGSBY: Objection.  
 14 THE WITNESS: She never indicated that  
 15 to me.  
 16 BY MR. BELAZIS:  
 17 Q Did you have any reason to doubt it?  
 18 A I have no reason to doubt she reported that to  
 19 the doctor that day.  
 20 Q Do you have any reason to doubt that her high  
 21 blood sugars were causing tremendous headaches?  
 22 A I don't know, sir, she never reported that to me.  
 23 Q Okay. But now that you have seen this, you're  
 24 aware that that's what her belief is, right?  
 25 A I'm aware that she is reporting that to the

Page 91

1 doctor, yes.  
 2 Q Did you ever ask for any documentation from her  
 3 medical provider to confirm that she had  
 4 tremendous headaches secondary to her high blood  
 5 sugars?  
 6 MS. GRIGSBY: I'm going to object. I  
 7 think you're taking the language out of context,  
 8 but you can answer if you can.  
 9 BY MR. BELAZIS:  
 10 Q Let me rephrase it. Once you got this report  
 11 from Dr. Kale, did you request that Mrs. Smith  
 12 provide you with medical documentation from her  
 13 treating physician about headaches associated  
 14 with her diabetes?  
 15 A Sir, as part of this assessment of evaluation and  
 16 part of what we asked this treating physician was  
 17 to request her medical records and she refused to  
 18 provide him. So given that information, no, I  
 19 did not request medical records from her again.  
 20 Q I understand that. All I'm asking is this: You  
 21 asked her to perform, to undergo a Fitness for  
 22 Duty Evaluation to see whether she could return  
 23 to work, right?  
 24 A Yes.  
 25 Q Aside from this, did you ever ask, once you

Page 92

1 became aware that she suffered from headaches  
 2 associated with high blood sugar, did you ever  
 3 ask for confirmation from her treating, that she  
 4 provided you with confirmation from her treating  
 5 physician related to the need for -- let me ask  
 6 this a little differently.  
 7 Did you ever request -- and I guess the  
 8 answer is self evident -- did you ever request  
 9 that she provide you with anything from her  
 10 treating physician, outside of your attempt to  
 11 determine whether she could come back to work?  
 12 A As part of this request, we requested that.  
 13 Q That's right. And that request was made for the  
 14 purpose of determining whether she could come  
 15 back to work, right?  
 16 A It was made as part of the request to look at her  
 17 medical complaints and the evaluation performed  
 18 by Dr. Kale.  
 19 Q Let's read what you said to her again. Let's go  
 20 back to -- let's see, which one is it? In your  
 21 letter to her you indicate that you're asking,  
 22 pursuant to Article VII of the Collective  
 23 Bargaining Agreement, you're asking for --  
 24 requiring her to undergo a physical examination  
 25 to determine her physical and mental capacity to

23 (Pages 89 to 92)

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Page 93

1 continue to teach, right?  
 2 A Yes, sir. That's what it says.  
 3 Q And this provision of the Collective Bargaining  
 4 Agreement relates to Fitness for Duty  
 5 Examinations, doesn't it?  
 6 A Yes, sir.  
 7 Q And your letter to Dr. Kale -- or Kale, excuse  
 8 me. What did I do with that? Do you have it  
 9 there? Do you have the letter to Kale?  
 10 A Yes, the one to Dr. Kale.  
 11 Q Yes.  
 12 A It's right there.  
 13 Q Okay. Your letter to Kale says, "The district  
 14 has asked for this independent medical evaluation  
 15 to determine if Mrs. Smith's medical condition  
 16 precludes her to continue to teach," right?  
 17 That's what it says?  
 18 A Then it goes on to say, "Her current propensity  
 19 to fall asleep while responsible for the  
 20 supervision and instruction of students at worst  
 21 places the school district at risk, while at best  
 22 cheats our students out of quality instruction."  
 23 Q Nowhere in that document did you ask her for  
 24 medical documentation from her treating  
 25 physicians to confirm her need for an

Page 94

1 accommodation, did you?  
 2 A We asked for complete medical records that she  
 3 refused to provide.  
 4 Q Answer my question.  
 5 A I did answer it.  
 6 Q Nowhere in that document did you ask her for  
 7 medical documentation to confirm her need for  
 8 accommodation, did you?  
 9 A We did not specifically ask to confirm her need  
 10 for accommodations, we specifically did ask for  
 11 all of her medical documents and records that  
 12 she, again, refused to supply.  
 13 Q And, in fact --  
 14 A For any reason.  
 15 Q And, in fact --  
 16 MS. GRIGSBY: Wait, wait. Let him  
 17 finish his answer before you ask your next  
 18 question.  
 19 BY MR. BELAZIS:  
 20 Q And, in fact, you didn't even mention  
 21 accommodations, did you?  
 22 A Mention it in what capacity, sir?  
 23 Q In any capacity, did you mention accommodations,  
 24 in any of the correspondence that you sent to the  
 25 doctor or to Mrs. Smith, was there any mention of

Page 95

1 accommodations?  
 2 A Yes, there are.  
 3 Q Where?  
 4 A Letter to Dr. Kale, third paragraph.  
 5 Q No. No.  
 6 MS. GRIGSBY: You just asked him.  
 7 THE WITNESS: You just asked me that,  
 8 okay? You asked about accommodations.  
 9 BY MR. BELAZIS:  
 10 Q Keep your voice down.  
 11 A Okay.  
 12 Q You don't need to yell.  
 13 A All right.  
 14 Q You don't need to yell.  
 15 A Then let me answer the question. You asked, did  
 16 anyplace --  
 17 Q If you can please lower your voice.  
 18 A You asked if anyplace did I respond or request  
 19 for Dr. Kale or mention to Dr. Kale about  
 20 accommodations. It's clearly here in writing.  
 21 In the third paragraph of the letter to Dr. Kale,  
 22 it says, "We also offered accommodations should  
 23 she feel a reaction to a low or high blood sugar  
 24 level coming on, she has never taken advantage of  
 25 accommodations offered nor has she brought up her

Page 96

1 diabetes to him again."  
 2 Q That's what you said to him, right?  
 3 A That is correct.  
 4 Q Okay. That's not my question.  
 5 A It was your question.  
 6 MS. GRIGSBY: It was your question.  
 7 BY MR. BELAZIS:  
 8 Q Well, then, let me ask it again. Did you ever  
 9 tell or request from Mrs. Smith copies of any  
 10 medical documentation for the purpose of  
 11 verifying her need for accommodations?  
 12 MS. GRIGSBY: That question has been  
 13 asked and answered.  
 14 THE WITNESS: My overall request for  
 15 medical documentation was for all purposes,  
 16 including that. Did I specifically request that  
 17 of her in writing or in any way, no, I asked for  
 18 her records.  
 19 BY MR. BELAZIS:  
 20 Q Okay.  
 21 A She refused.  
 22 Q By the way, at the point that this examination  
 23 was undertaken by Dr. Kale, he indicates that she  
 24 was 5'1" and weighed, slowly after losing  
 25 80 pounds, still weighed 227 pounds; is that

24 (Pages 93 to 96)

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Page 97

1 right?  
 2 A On page 3 he indicates she is 5'1" inches tall  
 3 and weighs 227-1/2 pounds.  
 4 Q And you would agree with me that that would fall  
 5 under the category of extreme obesity, wouldn't  
 6 it?  
 7 MS. GRIGSBY: Objection.  
 8 THE WITNESS: Again, I don't know the  
 9 definition of obesity, we went over that.  
 10 MS. GRIGSBY: How long do you think?  
 11 I'm thinking --  
 12 MR. BELAZIS: Do you want to take a  
 13 break?  
 14 MS. GRIGSBY: Well, if you're going to  
 15 be 4 or 5 hours I think lunch is order, but --  
 16 MR. BELAZIS: I'm not going to be 4 to  
 17 5 hours, but if you want to take a break we can.  
 18 MS. GRIGSBY: I'm trying that plan the  
 19 day. So you do intend to get to Steve?  
 20 MR. BELAZIS: I will, yes.  
 21 MS. GRIGSBY: Okay. And your estimate  
 22 for Jim is?  
 23 MR. BELAZIS: Let me see. I would  
 24 guess another hour.  
 25 MS. GRIGSBY: Then let's take

Page 98

1 45 minutes for lunch and come back if that's okay  
 2 with you.  
 3 MR. BELAZIS: Sure, that's fine.  
 4 (Off the record and a lunch break was  
 5 taken.)  
 6 BY MR. BELAZIS:  
 7 Q Okay. Going back to Exhibit 5, there was --  
 8 there was another allegation that was made prior  
 9 to the issuance of that disciplinary action as I  
 10 recall related to Mrs. Smith being in her car  
 11 asleep. Do you recall that?  
 12 A Yes.  
 13 Q What can you tell me about your recollection?  
 14 A My recollection is that it was a middle school  
 15 custodian reported to Mr. Finn that on the  
 16 particular day in question, February 25th, that  
 17 he witnessed Carol Smith in her car in the  
 18 parking lot at the middle school during the time  
 19 frame she should have been in class.  
 20 Q Do you know who that custodian was?  
 21 A I do not know the name off the top of my head, I  
 22 do not.  
 23 Q Anybody you spoke to?  
 24 MS. GRIGSBY: I'm sorry?  
 25 BY MR. BELAZIS:

Page 99

1 Q Did you speak to him?  
 2 A I did not, no, this came to me from Mr. Finn.  
 3 Q Okay. And when you made -- when you say that  
 4 during the time that she was supposed to be in  
 5 class, she was supposed to be over at the middle  
 6 school at that point?  
 7 A That was my understanding, yes.  
 8 Q That was based on the shortened schedule?  
 9 A Yes.  
 10 Q And that's because it was a shortened schedule --  
 11 well, strike that. I think you answered it  
 12 already.  
 13 Mrs. Smith was -- let me start again.  
 14 I'm sorry. You would perform periodic  
 15 evaluations of the administrators? I think we  
 16 already talked about that earlier in the  
 17 deposition.  
 18 A At least usually once a year or sometimes twice.  
 19 Q Okay.  
 20 A In a written format.  
 21 Q Right. Would you describe the process that you  
 22 went through when you prepared those evaluations?  
 23 A Typically, I would meet with the administrators  
 24 at some point throughout the year, have a  
 25 conversation with them about their area of

Page 100

1 responsibility. If it was the building principal  
 2 of a particular building, any goals or changes or  
 3 aspirations they wanted to have for that year,  
 4 any concerns they had about their  
 5 responsibilities that they wanted me to be aware  
 6 of, I would lay out to them that, you know, that  
 7 the evaluation process and the time frame I was  
 8 looking to evaluate them in. Usually I would, at  
 9 some point in that, whatever that window that I  
 10 laid out, would write up an evaluation in draft  
 11 format. I typically would send it to the  
 12 administrator, ask them to review it and schedule  
 13 a meeting with me. We would then sit down and  
 14 meet and discuss the draft evaluation and make  
 15 notes. Sometimes on the evaluation itself  
 16 comments they made that ultimately would be  
 17 reflected in the final evaluation that would get  
 18 filed. Subsequent to meeting with them, I would  
 19 then modify the evaluation potentially if I saw,  
 20 or in the conversation with them, felt that there  
 21 was more information than particular areas that  
 22 might need to be reflected, and then I would send  
 23 them a final evaluation and ask them to sign it.  
 24 And also remind them that they had every right to  
 25 add their own rebuttal to anything that was

25 (Pages 97 to 100)

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Page 101

1 written in the evaluation.  
 2 (Plaintiff's Exhibit 25 was referred to.)  
 3 BY MR. BELAZIS:  
 4 Q Let me just take an example here. It looks like  
 5 you -- let me hand you this, it has already been  
 6 marked as an exhibit, but let me just hand you  
 7 what I think is marked as Exhibit 25 from Mr.  
 8 Gasteier's deposition. And it states, it says  
 9 it's an evaluation and it's dated June --  
 10 A 9, 2009.  
 11 Q 9, 2009, right?  
 12 A Yes, sir.  
 13 MR. BELAZIS: And let me mark this.  
 14 (Plaintiff's Exhibit 30 was marked and attached.)  
 15 BY MR. BELAZIS:  
 16 Q And it looks like you, looking at what's been now  
 17 marked at Plaintiff's Exhibit 30, it looks like  
 18 you evaluated Mr. Finn at the same time?  
 19 A Yes, sir.  
 20 Q So the date here, for example, on Mr. Gasteier's  
 21 evaluation, what does that reflect? Had you sent  
 22 him the draft before that?  
 23 A Yes. That would reflect the date that I had  
 24 completed the final written evaluation, forwarded  
 25 it back to him for signature.

Page 102

1 Q Okay. So by that time you would have sent them  
 2 your draft evaluation, indicated the areas of  
 3 strength and weakness that you saw and sat and  
 4 met with them to discuss it?  
 5 A In a typical evaluation, yes.  
 6 Q Okay.  
 7 A That may not have happened at every single  
 8 evaluation, but typically that's what I would do.  
 9 Q Do you have a recollection that that, anything  
 10 different happened with respect to these two  
 11 evaluations?  
 12 A I don't recall anything differently on these.  
 13 Q All right. And I don't know if I asked you to  
 14 confirm that this is an evaluation, the  
 15 evaluation you prepared for Mr. Finn for June,  
 16 dated June 9, 2009. Maybe an easier way is to  
 17 see if that's your signature at the end.  
 18 A Yes, it is. What I don't know is why it's signed  
 19 in October versus dated June 9th.  
 20 Q Okay.  
 21 A I don't know why.  
 22 Q As I recall, there was also a -- let's see here.  
 23 By the way, when you say that you prepared a  
 24 draft and then sent it to the -- to your  
 25 principal ahead of time, how long would that

Page 103

1 process normally take; in other words, how long  
 2 in advance of the final draft.  
 3 A It varies completely because I didn't typically  
 4 give a time frame for the principal to respond to  
 5 that. Some of them it would be a few days, some  
 6 of them it would be several months.  
 7 Q But I'm talking about the draft version.  
 8 A In terms of them meeting with them on the draft  
 9 version?  
 10 Q Yes?  
 11 A From the time I sent it to them?  
 12 Q Yes.  
 13 A Usually a month.  
 14 Q A month?  
 15 A Yes, usually. Then again, not always. And not  
 16 always did I hold the meeting. Sometimes the  
 17 administrator would send it back and they would  
 18 say everything looks good, sign it and send it  
 19 back.  
 20 Q This is already marked.  
 21 A Are you looking for a different one?  
 22 Q Yes. I'm sorry.  
 23 MS. GRIGSBY: 25 perhaps. The wrong  
 24 marked 25?  
 25 MR. BELAZIS: No, it's different.

Page 104

1 BY MR. BELAZIS:  
 2 Q If you look at what was previously marked as  
 3 Exhibit 22, what was identified as an evaluation  
 4 of Mrs. Smith. It was prepared by Mr. Finn in  
 5 March of 2009?  
 6 A Okay.  
 7 Q Do you recall having any discussion with Mr. Finn  
 8 prior to his preparation of that evaluation, ask  
 9 him that he perform one?  
 10 A No, I do not.  
 11 Q Do you remember anything in particular about Mrs.  
 12 Smith's March, 2009 evaluation?  
 13 A Not off the top of my head, I do not.  
 14 Q Dr. Gunner, with respect to both Mr. Finn and Mr.  
 15 Gasteier, it looks to me as though you were not  
 16 satisfied with the extent to which they appraised  
 17 and evaluated teachers under their supervision.  
 18 Do you see that?  
 19 A Yes, I marked in both cases that they need  
 20 improvement in that area.  
 21 Q And do you recall the details; in other words, in  
 22 what respect you found those lacking?  
 23 A Normally I would comment on those and the next  
 24 page where we are talk about any comments I would  
 25 add. So in the case of Mr. Finn, I make a

26 (Pages 101 to 104)

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Page 105

1 comment second from the bottom bulletin item, it  
 2 says, "Ensure the teacher is up for contract  
 3 renewal or with any areas of concern are to  
 4 evaluate honestly each year. If there are areas  
 5 of concern, make sure you document a plan for  
 6 improvement and what help and resources the  
 7 school district will provide in this area."  
 8 Q You're looking at Mr. Finn?  
 9 A Yes, sir.  
 10 Q Can you think of any respect in which Mr. Finn  
 11 had been deficient in that area at the time?  
 12 A Again, I think there was an overall evaluation  
 13 technique in the district to not give adequate  
 14 time to the evaluate process and to evaluate  
 15 staff sort of superficially, that everything was  
 16 okay. And this was another reminder on my part  
 17 that I expected honest evaluations of staff.  
 18 Q In other words, he was being too nice?  
 19 MS. GRIGSBY: Objection.  
 20 THE WITNESS: That's not my words.  
 21 Honest is what I want.  
 22 BY MR. BELAZIS:  
 23 Q Let me just a couple more things about your  
 24 knowledge and understanding of diabetes based on  
 25 your just your general knowledge and perhaps your

Page 106

1 experience with your daughter. Are there certain  
 2 things that are important for diabetics to do in  
 3 order to maintain their stability in terms of  
 4 their sugar levels?  
 5 MS. GRIGSBY: Objection.  
 6 MR. BELAZIS: I'm just asking for his  
 7 understanding.  
 8 THE WITNESS: I can reference it to my  
 9 understanding to my daughter only. Regular blood  
 10 glucose checks to determine where your blood  
 11 sugar is, consistency in terms of recording that  
 12 information so that you can look for patterns in  
 13 terms of what may be affecting diabetes because  
 14 it's my understanding that diabetes impacts  
 15 different individuals differently and it's a  
 16 difficult disease to regulate because of that  
 17 fact. And as, in our case, my daughter, as she  
 18 grows and matures and goes through puberty and  
 19 all of those things impact her ability to  
 20 maintain a level, blood sugar glucose level.  
 21 Q Okay. What about in terms of nutrition, are  
 22 these particular things that are important?  
 23 A It used to be the misnomer that you couldn't eat  
 24 sweets, couldn't have anything to do with sugar.  
 25 That's not the case. It's more about balance,

Page 107

1 it's more about a good nutritious diet like any  
 2 other student, or any other individual would  
 3 have.  
 4 Q What about regularity of meals?  
 5 A Again, that depends on individual diabetics and  
 6 how it impacts. The more consistent you can be,  
 7 the more you can monitor what's going on in your  
 8 own body, the more you can get a handle on when  
 9 you're likely to have high blood sugar, low blood  
 10 reactions.  
 11 Q By consistent you mean consistency in terms of  
 12 your meals?  
 13 A Consistency in terms of meals, in terms of  
 14 exercise, in terms of sleep, in terms of  
 15 activity, just general activity. All of that  
 16 interplays is my understanding on control of  
 17 diabetes.  
 18 Q Okay. Do you know who had involvement in  
 19 establishing the schedule for Carol Smith during  
 20 the 2008-2009 school year where she was half day  
 21 at the high school and half day at the middle  
 22 school?  
 23 A I believe the final decision was mine, but I  
 24 think it was a consultation between Mr. Finn, Mr.  
 25 Gasteier and myself.

Page 108

1 Q And by final decision you mean you reviewed the  
 2 schedule and where she would be when and then  
 3 approve that?  
 4 A I looked at the high school needs for her, and  
 5 when her schedule was open for other assignments.  
 6 In a conversation with Mr. Gasteier and Mr. Finn,  
 7 we looked, and also noticed that he needed an  
 8 assistants that could be complementary to the  
 9 high school schedule and I made the final  
 10 decision and assigned Carol to those duties.  
 11 Q And there was a schedule, I think, that was --  
 12 you guys -- the high school keeps track of each,  
 13 what each teacher's schedule will be in terms of  
 14 the courses they will teach and what times those  
 15 would be, etc.?  
 16 A Yes, yes.  
 17 MR. BELAZIS: And I want to mark these  
 18 two. Let's mark that one.  
 19 MS. GRIGSBY: Okay, do you want to go  
 20 ahead? Do you want me to pull the top sheet  
 21 off --  
 22 (Plaintiff's Exhibits 31 and 32 were marked and  
 23 attached.)  
 24 BY MR. BELAZIS:  
 25 Q So can you confirm, Dr. Gunner, that that's the

27 (Pages 105 to 108)

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Page 109

1 schedule for Carol Smith that related to various  
 2 school years? I think it was submitted as an  
 3 exhibit during the disciplinary hearing.  
 4 A I have no knowledge of her schedule during 2007  
 5 and 2008 and I came in right at the end of the  
 6 year. I'm assuming that this came from the high  
 7 school is accurate, but I don't know that  
 8 personally.  
 9 Q But this is the kind of information you would  
 10 have reviewed in order to prepare her schedule  
 11 for high school?  
 12 A No. I would have reviewed the entire block  
 13 schedule from the high school that had every  
 14 teacher on it and what assignment that they had,  
 15 and when they were opened, and I would have  
 16 looked at this same type of document from the  
 17 middle school. This is specific to Carol alone.  
 18 And it does provide that she had the three  
 19 classes at the high school in the 2008-2009  
 20 school year that I mentioned earlier and the  
 21 conference period was also provided at the high  
 22 school. So from the end of fourth period on,  
 23 contractually she needed lunch and then any  
 24 travel time between the two buildings.  
 25 Q Okay. And so if I understand correctly, what you

Page 111

1 Q Assuming that's correct.  
 2 A Correct.  
 3 Q Assuming this was provided to me by -- well, go  
 4 ahead.  
 5 A Assuming this is correct, what the high school  
 6 was saying, in essence, and this is -- we need  
 7 her for these three teaching periods. We can  
 8 provide her her conference and her lunch block.  
 9 Starting at 11:30, we will have met all of those  
 10 requirements. Middle school, you can have her at  
 11 11:30, knowing that she has had lunch and knowing  
 12 that she has had her conference. Now, I don't  
 13 know if the middle school started her right away  
 14 at 11:30.  
 15 Q Okay. So if you look at the -- was there a  
 16 difference between the starting times for the  
 17 high school and middle school?  
 18 A High school and middle school ran different times  
 19 and also different schedules. High School had a  
 20 nine period day if I remember correctly, and I  
 21 believe Briar had a seven or an eight period day.  
 22 But regardless of the number of periods, they did  
 23 not -- they didn't sync up, the start and end  
 24 time of a class at the high school was not the  
 25 identical start and ending time of a class at

Page 110

1 did is you had a larger block schedule for the  
 2 high school and then you kind of put Carol in  
 3 there to see where she would fit to make sure  
 4 that --  
 5 A I did not. The two schedules came to me already  
 6 pretty much complete.  
 7 Q And then you just reviewed them?  
 8 A I reviewed them. Took a look that Carol  
 9 basically was blocked solid in the morning but  
 10 had her entire afternoon free. I looked at Mr.  
 11 Finn's and saw what he needed was in the  
 12 afternoon, and that Carol is qualified to teach  
 13 that keyboarding class in the afternoon. Made  
 14 the decision to assign her to it.  
 15 Q And the way that it was blocked is what you  
 16 received?  
 17 A Correct. I did not ask them to go back and  
 18 change what they had already done.  
 19 Q Okay. Now, Mrs. Smith's lunch was during period  
 20 5-A, did I read this correctly?  
 21 A That's what this says, yes.  
 22 Q And then after her 5-A lunch period, she would be  
 23 required to be at Briar starting at 11:30, right?  
 24 A That's what this says. I don't know the exact  
 25 starting time that Mr. Finn needed her at.

Page 112

1 Briar.  
 2 (Plaintiff's Exhibit 32 was marked and attached.)  
 3 BY MR. BELAZIS:  
 4 Q Okay. Let me hand you what's been marked as  
 5 Plaintiff's Exhibit 34, I'm sorry.  
 6 A 32.  
 7 Q Yes, 32.  
 8 A Okay.  
 9 Q Can you tell me what that is?  
 10 A This looks like at one time a master schedule for  
 11 the high school. It looks like the schedule for  
 12 the high school during 2009 and '10. And on this  
 13 particular year, it looks like they had seven  
 14 periods, plus a seminar.  
 15 Q So this varied from year to year; is that what  
 16 you're saying?  
 17 A Yes, they changed schedules.  
 18 Q Okay. Put here what was marked so we've got it  
 19 as an exhibit. Let's see here.  
 20 (Plaintiff's Exhibit 10 was referred to.)  
 21 BY MR. BELAZIS:  
 22 Q Okay. Let me hand you what's been marked as  
 23 Plaintiff's Exhibit 10 during Mr. Gasteier's  
 24 deposition.  
 25 A Okay.

28 (Pages 109 to 112)

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Page 113	Page 115
<p>1 Q Can you tell me what your involvement was with 2 respect to this exhibit? First of all, what is 3 it?</p> <p>4 A There are two letters here, one dated July 19, 5 2009, the other one dated July 8, 2009. The 6 first one is an invitation to a disciplinary 7 conference to be held on July 7th at 3:00 in my 8 office related to accusations of Carol Smith 9 sleeping during professional training in the 10 summer. And the second is my disposition 11 indicating that I believe that she was sleeping, 12 again, and that I docked her an hour's pay for 13 each of the two days in question.</p> <p>14 Q Okay. And, by the way, I asked your counsel 15 about whether you had any notes associated with 16 your various disciplinary conferences and 17 meetings involving Mrs. Smith, and I think she 18 had indicated that you didn't think you had any. 19 But have you been able to located any?</p> <p>20 A I do not have any notes.</p> <p>21 Q Okay.</p> <p>22 A Uncharacteristic for me to take notes during the 23 meeting.</p> <p>24 Q All right. So can you tell me please what the 25 extent of your involvement was with respect to</p>	<p>1 of these meetings again, specifically was there 2 any medical condition, including her diabetes, 3 that was contributing to the perception or 4 reality that she was falling asleep in these 5 ongoing situations. She indicated no. I asked 6 her again if there was anything like that, did 7 she need any assistance, any help, is there any 8 medical condition, anything at all that, 9 ultimately, you know, we could assist her with 10 that would stop the perception or stop the 11 reality of her sleeping in class. And, again, 12 she indicated very vociferously that she wasn't 13 sleeping, that she was simply resting her eyes 14 and she was fine and she knew everything that was 15 going on in the classroom. Given the statements 16 of the other adults in the case, I did not 17 believe Carol and I believed that she was 18 sleeping. And as a result, I proceeded forward 19 with docking her an hour for each of those, and I 20 also made it very, very clear that if there are 21 any further incidents like this, that instead of 22 may result, that I would recommend her 23 termination, that there were going to be no more 24 chances.</p> <p>25 Q Was anyone else present during this meeting?</p>
Page 114	Page 116
<p>1 disciplinary proceedings or references to these 2 letters?</p> <p>3 A I was contacted by, I believe, Mr. Dahlman, the 4 assistant principal at the high school, that he 5 had been approached by two teachers with Carol's 6 sleeping during the technology training and that 7 they were embarrassed by her behavior as fellow 8 teachers. And he provided to me a written 9 statement from one of the teachers. I spoke to 10 the other teacher. I also spoke to the 11 independent trainer who we were paying who was 12 not a Perkins employee and all of them confirmed 13 that Carol was sleeping at least on two 14 occasions. Once each day, again, usually during 15 what they termed the project time, which was 16 after they had broken for lunch and they were to 17 come back and work in groups on whatever had been 18 taught during that morning. Given that 19 information, I invited Carol into a meeting. I 20 met with her in that meeting with John Gerber 21 present. I went through the allegations as 22 presented. Carol denied that she was asleep, 23 indicated she was simply resting her eyes, she 24 was fully aware of everything that was going on 25 in the training. I asked her, as I have in most</p>	<p>1 A John Gerber, the PEA president.</p> <p>2 Q The individuals that you said you talked to were 3 the trainer?</p> <p>4 A Uh-huh. The Apple provided a trainer, a 5 professional developer.</p> <p>6 Q That was one. Any others?</p> <p>7 A Nancy Kinsel, who was the teacher that brought it 8 to Mr. Dahlman, and Shannon LaRose Smith who was 9 another teacher who reported to Mr. Dahlman as 10 well that she saw what had taken place.</p> <p>11 Q And I take it that you did not, in relationship 12 to that series of disciplinary actions, request 13 that Mrs. Smith provide you with any 14 documentation, again, from any physician 15 confirming that her -- that the resting of her 16 eyes, or that the closing of her eyes related to 17 any medical condition such as her visual issues?</p> <p>18 A I did not request documentation. 19 (Plaintiff's Exhibit 11 was referred to.) 20 BY MR. BELAZIS:</p> <p>21 Q Okay. Let's have a look at what's been marked as 22 Plaintiff's Exhibit 11.</p> <p>23 A Okay.</p> <p>24 Q Can you identify what's previously been marked as 25 Plaintiff's Exhibit 11?</p>

29 (Pages 113 to 116)

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Page 117

1 A These are a sequence of letters that I wrote to  
2 Mrs. Smith regarding an incident that happened in  
3 March of 2010 regarding allegations and Mrs.  
4 Smith teaching pornography in her Social Studies  
5 classes at Perkins High School. And ultimately  
6 these letters invite her to a series of meetings  
7 with me to discuss the allegations against her,  
8 which are ultimately not only just inappropriate  
9 discussions, but, again, sleeping or dozing off  
10 while supervising kids, repeatedly arriving  
11 tardy, and falling asleep during an academic team  
12 practice, which is an extracurricular activity  
13 that she taught.  
14 Q Okay. I'm sorry, going back to, I just wanted to  
15 make sure I had it right. During the previous  
16 disciplinary conference you had following the  
17 training, you told me who was present for that.  
18 Who did you say, if anyone?  
19 A The ones that I remember were Carol, John Gerber  
20 and myself.  
21 Q Oh, Mr. Gerber, that's right.  
22 A Right.  
23 Q Okay. Now, with respect to what's been marked as  
24 Exhibit 11.  
25 A Uh-huh.

Page 118

1 Q That ultimately resulted in your -- in an  
2 investigation with which you were involved; is  
3 that correct?  
4 A Yes.  
5 Q And following that investigation, and you were  
6 assisted by a Mr. Gasteier; is that correct?  
7 A Yes.  
8 Q And following that investigation you recommended  
9 Mrs. Smith's termination, right?  
10 A Yes.  
11 Q And there were three separate grounds?  
12 A Ultimately, there were three separate groups,  
13 yes.  
14 Q Well, your recommendation included three separate  
15 grounds; is that correct?  
16 A Yes. At one point, there was a fourth concern  
17 that I did not include in the file.  
18 Q Okay. And the three issues were?  
19 A The date of the last letter dated April 14th at  
20 the bottom, "The specifications of grounds for  
21 this recommendation is as follows: No. 1, you're  
22 engaging in inappropriate discussions with your  
23 high school Social Studies class regarding  
24 pornography. Two, your repeated dozing off for  
25 several minutes at a time while supervising

Page 119

1 students during 5-D Study Hall, thereby  
2 continuing a pattern of sleeping on the job and  
3 engaging in unprofessional conduct. And 3, your  
4 repeatedly arriving tardy to your fifth period  
5 history class, thereby, A, leaving your students  
6 unattended; and B, continuing a pattern of being  
7 tardy for assigned duties and engaging in an  
8 unprofessional manner."  
9 Q Ultimately, there was a recommendation by the  
10 Board of Education to terminate Mrs. Smith's  
11 contract, right?  
12 A Yes.  
13 (Plaintiff's Exhibit No. 33 was marked and  
14 attached.)  
15 THE WITNESS: Yes, sir.  
16 BY MR. BELAZIS:  
17 Q You have been handed what's been marked as  
18 Plaintiff's Exhibit 33. This is basically the  
19 notice that you gave to Mrs. Smith advising her  
20 of the board action?  
21 A My treasurer give it to her.  
22 Q Okay. And you recognize this document as being  
23 that?  
24 A Yes.  
25 Q 34?

Page 120

1 (Plaintiff's Exhibit 34 was marked and attached.)  
2 BY MR. BELAZIS:  
3 Q You've also been handed what's been marked as  
4 Plaintiff's Exhibit 34. And can you confirm  
5 that's the Board's resolution adopting your  
6 recommendations?  
7 A Yes.  
8 MR. BELAZIS: Just take a quick break?  
9 THE WITNESS: Yes.  
10 (Off the record.)  
11 BY MR. BELAZIS:  
12 Q Okay. Now, your investigation included what?  
13 MS. GRIGSBY: Investigation?  
14 BY MR. BELAZIS:  
15 Q We were last -- I'm sorry, we were last talking  
16 about the fact that you had conducted an  
17 investigation related to these charges that were  
18 brought up in your letter of March 29th, 2010?  
19 A Okay.  
20 Q Marked as Exhibit 11, right?  
21 A 11, right. I was emailed by my vice president of  
22 the Board of Education, Steve Schuster, who had  
23 been contacted by one of our teachers with  
24 allegations that Carol had had a conversation in  
25 class, fifth period history class in particular

30 (Pages 117 to 120)

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1 on Friday, March something -- 19, that rings a  
 2 bell, but I'm not sure if that's right. And that  
 3 the conversation made the paraprofessional in the  
 4 classroom uncomfortable and made several students  
 5 uncomfortable, and he wanted to know if I knew  
 6 anything about it. I was out of the district at  
 7 that time on a professional meeting I believe in  
 8 Marion, Ohio. I indicated to Mr. Schuster that I  
 9 would look into it when I got back, which would  
 10 be the next day, Friday the 29th, I believe of --  
 11 or no, that would have been the 26th of March,  
 12 the Friday before. So sometime Friday afternoon  
 13 I went down to the high school to see the  
 14 paraprofessional who had originally brought the  
 15 concern up. Unfortunately, she had left early  
 16 that day and was not available. I asked to see  
 17 Mr. Gasteier, not remembering that he was out of  
 18 town at professional development in California.  
 19 I then met with Mr. Dahlman, the assistant  
 20 principal. I asked him if he had been aware of  
 21 any such allegations against Carol or had heard  
 22 any similar type of comment regarding a recently  
 23 taught history class, and he indicated he had  
 24 not. I then asked if he would look at Carol  
 25 Smith's fifth period history class, randomly

1 select three or four students and bring them down  
 2 to the office so I could talk to them. He  
 3 brought four students down. I sat them in Mr.  
 4 Gasteier's office around a circular table that he  
 5 has. I introduced myself to them, told them  
 6 what, you know, who I was and what my role was in  
 7 the district. Told them that I had been made  
 8 aware of an allegation regard one of their  
 9 teachers. One of the young ladies started  
 10 laughing right away and she said, "You mean Carol  
 11 Smith?" And I said, "What can you tell me about  
 12 Carol Smith?" She proceeded to tell me that,  
 13 "Oh, she was talking pornography in class." And  
 14 then she proceeded to tell me that she also  
 15 doesn't have -- her words were, not identical,  
 16 but it's a characterization of her words would be  
 17 the class is completely out of control, unruly,  
 18 she falls asleep at times, she's regularly 5, 10,  
 19 15 minutes late to class.  
 20 Q This is the Social Studies class?  
 21 A Yes. Not learning anything in this class. I  
 22 wish I had a different teacher. I turned to the  
 23 other three girls present and just asked them  
 24 generally, again, the original question about,  
 25 did they know of any concerns regarding a

1 particular teacher they had. I didn't mention  
 2 Carol by name at that point. They proceeded to  
 3 follow-up with the conversation from the first  
 4 girl, confirmed that there was a conversation  
 5 about pornography, confirmed that in their mind  
 6 that classroom was not under effective control,  
 7 especially during the study hall period.  
 8 Confirmed that, and, again, I can't say all three  
 9 confirmed every single issue, but generally  
 10 confirmed all the allegations that, yes, she was  
 11 regularly tardy to class, and not unusual for her  
 12 to fall asleep for several minutes at a time, and  
 13 particularly in study hall, the D section of the  
 14 class when they return from lunch. I thanked the  
 15 girls. I asked them to please not share our  
 16 conversation with anybody at that point. The  
 17 girl who initiated the conversation did tell me  
 18 that she was not present on the Friday of the  
 19 pornography conversation, she was absent from  
 20 class, but she had heard it from other  
 21 classmates. But the other things that she saw  
 22 herself that she alleged to me. At that point it  
 23 was 3:00 in the afternoon, the high school was  
 24 ending for the week, so I had no further ability  
 25 to continue to interview the rest of the

1 students. I proceeded to make a phone call to  
 2 Mr. Gasteier at that point and fill him in on the  
 3 allegations that had taken place in the  
 4 investigation that I had started, told him I  
 5 wanted to meet with him first thing Monday  
 6 morning, and that we obviously needed to continue  
 7 this investigation. Asked him, prior to his  
 8 trip, had he been aware of any rumor or any  
 9 allegation regarding this particular incident.  
 10 My recollection is he said, vaguely, but nothing  
 11 concrete, nothing where it was, you know, a  
 12 teacher or a particular student that came  
 13 forward, just in general, almost like rumor mill.  
 14 Q Who is that?  
 15 A He didn't allude to who the person was.  
 16 Q Who is he?  
 17 A Mr. Gasteier when I talked to him. And he said  
 18 he hadn't had a chance to look into it because it  
 19 happened right prior to his departure for  
 20 California. I then proceeded to call our  
 21 attorney and discuss the situation with our  
 22 attorney.  
 23 MS. GRIGSBY: And I'm going to instruct  
 24 you not to disclose the contents of any  
 25 communications with your attorney.

Page 125

1 THE WITNESS: Coming out of that, I  
2 made the decision to meet with Carol first thing  
3 Monday morning when she arrived. I handed her  
4 the first letter that you referenced in  
5 Exhibit 11, which is relieving her of all duties  
6 pending the outcome of the investigation. Met  
7 with her probably 7:30-ish Monday morning in Mr.  
8 Gasteier's office with Mr. Gasteier present, Mr.  
9 Gerber present, informed her of the allegations,  
10 handed her the letter, gave her a chance to read  
11 it. Asked her for her laptop, asked her for her  
12 keys, her electronic file to get in the building.  
13 I asked her for copies of her lesson plans. She  
14 indicated that she didn't -- it was grade  
15 reporting time. She didn't have her grades  
16 completely finished, could she have a few minutes  
17 to finish her grades? We allowed her to finish  
18 her grade input before we took the computer from  
19 her, she said she didn't have her lesson plans  
20 with her. That her husband could bring them into  
21 us. We said that would be fine, that we would  
22 like to have them brought into us. We then  
23 walked her out of the building. I then, in  
24 re-entering the high school, had Mr. Gasteier  
25 pull a list of all the students in Carol Smith's

Page 126

1 fifth period history class and we started calling  
2 them down in groups of three to four. We would  
3 pull them in the office for just a general  
4 cursory conversation, which would be, again, I  
5 would introduce myself as superintendent to make  
6 sure they knew who I was. I would explain to  
7 them that one of my jobs was to follow-up on any  
8 allegations against teachers, that unfortunately  
9 we have had an allegation against one of their  
10 teachers and that they were being brought down to  
11 share with us whatever they knew, and then told  
12 them that the allegation was against Mrs. Smith,  
13 and an incident took place on, I believe, again,  
14 Friday, March 19th, where there was a discussion  
15 of pornography in her history class. We told the  
16 students that we were going to separate them, sit  
17 them out in the office area at three to four  
18 different locations, give them a pad of paper and  
19 a pen and ask them to write down statements  
20 regarding specifically what did they remember or  
21 recall about the discussion of pornography, and  
22 then to answer or tell us any other concerns or  
23 issues they felt we ought to know about Mrs.  
24 Smith and her Social Studies classroom.  
25 BY MR. BELAZIS:

Page 127

1 Q This was as a group you mean, this is what you  
2 told them?  
3 A We told them all of this as a group, three or  
4 four at a time.  
5 Q You told them all the same thing?  
6 A Told them all the same thing. Each time a new  
7 group would come down, I would reiterate that  
8 sort of four to five-minute introduction as to  
9 why they were there.  
10 We would then escort them from the  
11 office, place them at three to four different  
12 desks that we had set up in the large office  
13 complex where they could be observed by the  
14 secretaries, but could not talk to each other.  
15 And as soon as one was finished, we would bring  
16 them in one at a time. I would read their  
17 statement. I had my laptop open, and I told them  
18 that I would -- I was going to follow up with  
19 some follow-up questions about their statement,  
20 and then also that I would be taking notes during  
21 the time frame. I reminded them it was critical  
22 that they be a hundred percent honest.  
23 Q Had you taken notes during your initial  
24 questioning of them?  
25 MS. GRIGSBY: You mean --

Page 128

1 THE WITNESS: The first group, I do not  
2 believe so. I do not believe I took notes at  
3 that time.  
4 BY MR. BELAZIS:  
5 Q You mean in the office?  
6 A Right.  
7 MS. GRIGSBY: Are you talking about the  
8 prior day?  
9 BY MR. BELAZIS:  
10 Q When you first brought down the first four, you  
11 were taking notes?  
12 A I do not believe I took notes. I can't remember  
13 for sure.  
14 Q But when you started bringing down kids?  
15 A Individually I took notes.  
16 Q Individually you took notes of what they said?  
17 A Correct.  
18 Q Okay. And that was on your laptop?  
19 A That is correct. That is correct. I would start  
20 out very generally, can you tell me about your  
21 written statement in just sort of an open-ended  
22 question and allow them to tell me what they  
23 wanted to tell me. I would then specifically  
24 talk about the pornography incident which  
25 initiated this whole investigation, and they

32 (Pages 125 to 128)

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Page 129

1 would proceed to tell me some, you know, comments  
 2 where, you know, Mrs. Smith talked about viewing  
 3 pornography when she was a student their age and  
 4 that she knew that they all did it, that it was  
 5 common. She made -- and, again, different kids  
 6 made different references, but the gist of the  
 7 references were, you know, that pornography  
 8 initially came up either from Mrs. Smith or  
 9 potentially from a student who made a comment,  
 10 you mean porn when Mrs. Smith was talking about  
 11 yellow journalism and sensationalism. I'm not  
 12 sure whether the student initiated the  
 13 conversation by saying porn or whether Mrs. Smith  
 14 did. She claimed she did not. The students are  
 15 all over the board on that issue. Most of the  
 16 students readily acknowledged the conversation  
 17 regarding porn, acknowledged feeling either  
 18 uncomfortable or silly with a woman of Mrs.  
 19 Smith's age talking about pornography to them,  
 20 didn't get how it fit with her Social Studies  
 21 classroom, didn't get the connection she was  
 22 trying to make, admitted the conversation was 5  
 23 to 10 minutes maximum in length, that it wasn't a  
 24 long drawn-out conversation, acknowledged that  
 25 some students tried to egg it on with comments,

Page 131

1 or three times a week, was it two minutes,  
 2 10 minutes, 15 minutes. Usually there were  
 3 comments about how long it took her even after  
 4 she entered to get the class under control to  
 5 start teaching. We pursued some conversations  
 6 about the length there and what she would do to  
 7 get the class back under control. Some students  
 8 would say, you know, I never saw her sleeping, I  
 9 don't have anything to tell you. Okay. Thank  
 10 you. Some would say, saw her sleeping, but  
 11 didn't necessarily comment on the tardy. So it  
 12 varied from student to student. The majority,  
 13 the preponderance of the kids acknowledged that  
 14 the class was typically out of control,  
 15 especially during study hall. They described  
 16 events with kids who are standing up shooting  
 17 plastic bottles in the waste paper can where Mrs.  
 18 Smith appeared to be completely asleep and  
 19 unaware of what was going on. They described,  
 20 you know, kids watching movies from their  
 21 laptops, kids blasting music on their laptops and  
 22 that Mrs. Smith took no intervention to have the  
 23 kids under control. They described being able to  
 24 freely leave the classroom during the D study  
 25 hall, and come back without even her

Page 130

1 that Mrs. Smith acknowledged her own viewing of  
 2 pornography in particular portraits of Nick Nolte  
 3 and Burt Reynolds that were common at the time.  
 4 Usually when we finished with the pornography  
 5 question, I would, again, review their statement.  
 6 Sometimes there were additional comments about  
 7 unruliness in the class, tardiness, Mrs. Smith  
 8 sleeping, sometimes there were not. Regardless  
 9 of whether there were or not, I pursued  
 10 conversations on those avenues with every  
 11 student. Those who had written it down, I would  
 12 reference what they had written and say, you  
 13 indicated, you know, Mrs. Smith was sleeping in  
 14 class, can you tell me more about that? Would  
 15 that be in her Social Studies class? Would that  
 16 be in her study hall? Would it be in both? How  
 17 do you know she was asleep? Was it, you know,  
 18 just a few seconds at a time, was it, you know,  
 19 at length, was it, you know, only once, was it  
 20 multiple times you would observe this? And try  
 21 to get some sense from the kids of what they  
 22 meant by that. When they talked about tardiness,  
 23 again, the same sequence and types of questions,  
 24 was this a one-time deal, was she walking in when  
 25 the bell rang? Was this every day, was this two

Page 132

1 acknowledging or knowing that they had left the  
 2 classroom. Again, not every kid certainly was,  
 3 it was not a uniform consistency to every  
 4 statement, but overwhelmingly the students'  
 5 comments echo what I just described to you. I  
 6 would thank the students, and as each one of them  
 7 left, I would remind them to please keep that  
 8 confidential, that I had many more students to  
 9 talk to, and that it was important that I be able  
 10 to talk to the students without them hearing  
 11 anything from the students that we had  
 12 interviewed. We continued that process all day  
 13 long. Sometime in late afternoon, I don't know  
 14 the exact time, 1:30, 2:00, I had another  
 15 appointment that I had absolutely had to be at.  
 16 We were down to four or five students that we had  
 17 not interviewed yet. I asked Mr. Gasteier to  
 18 finish the interviews with those four or five  
 19 students. I asked him to make sure he conducted  
 20 them the exact same way that I had so that there  
 21 was consistency in that. And then I asked him to  
 22 take notes during that process of what the  
 23 students said, and, again, allow each student to  
 24 write their independent statement first. He  
 25 concluded those, we met Tuesday morning and began

33 (Pages 129 to 132)

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Page 133

1 to review those notes.  
 2 Q Anything else?  
 3 A You know, at that time, again, after looking at  
 4 all of that information --  
 5 Q I mean, as far as your investigation.  
 6 A As far as investigation in terms of that  
 7 particular classroom at that time, I remember a  
 8 follow-up conversations with, again, our attorney  
 9 about what I had discovered.  
 10 MS. GRIGSBY: And, again, don't  
 11 disclose the content of those communications.  
 12 THE WITNESS: I won't.  
 13 BY MR. BELAZIS:  
 14 Q I'm sorry.  
 15 A I'm just trying to think if there were other -- I  
 16 believe at that particular time that concluded  
 17 what I know.  
 18 Q Was there any other, as far as investigations or  
 19 anything else that you did, other than talking  
 20 with Mrs. Smith?  
 21 A Certainly we gave Mrs. Smith the opportunity to  
 22 talk to us on a couple of different occasions.  
 23 And I don't know which Social Studies teacher. I  
 24 had a conversation with one of the other Social  
 25 Studies teachers and with Mr. Gasteier about

Page 134

1 yellow journalism sensationalism, and would they,  
 2 in their mind, ever connect that in any way,  
 3 shape or fashion to Playboy or to pornography,  
 4 just to, you know, I'm not a Social Studies  
 5 major, I don't make that connection, I just  
 6 wanted to make sure I wasn't missing something  
 7 here where that may be a valid connection to be  
 8 made. And, again, I don't remember which Social  
 9 Studies teacher I spoke to, but Mr. Gasteier is a  
 10 former Social Studies teacher and I know that he  
 11 and I had that conversation. I certainly had  
 12 kept my board informed of what was going on.  
 13 Q Okay. All I want to know about is whether there  
 14 was any other investigative activity on your part  
 15 other than talking to Mrs. Smith.  
 16 A I don't recall any at this time.  
 17 Q Okay. With respect to the issue of pornography,  
 18 I think you mentioned that at some point the  
 19 kids, the kids told that you Mrs. Smith talked  
 20 about Playboy and Playgirl; is that right?  
 21 A Yes.  
 22 Q And Mrs. Smith acknowledged that she talked about  
 23 Playboy and Playgirl?  
 24 A Yes.  
 25 Q And you, of course, thought that would be

Page 135

1 inappropriate?  
 2 A Yes.  
 3 Q All right. And at some point, at least based on  
 4 your understanding from what the kids told you  
 5 and from what Mrs. Smith told you, she  
 6 acknowledged that at some point at a younger age  
 7 she had viewed Playgirl or Playboy, right?  
 8 A I don't remember if Mrs. Smith acknowledged that  
 9 particular itemization or not.  
 10 Q But the kids told you that?  
 11 A The kids told me that. I do believe she  
 12 acknowledged mentioning the two actors as  
 13 examples of pornography in her era. I don't know  
 14 that she ever acknowledged actually viewing it  
 15 herself.  
 16 Q And your understanding was that, from Mrs.  
 17 Smith's point of view, that the discussion of  
 18 Playboy and Playgirl was made in relationship to  
 19 the more general discussion of journalistic  
 20 sensationalism?  
 21 A Yes.  
 22 Q There were a couple of photographs that were  
 23 marked as exhibits.  
 24 A Yes.  
 25 Q Last time.

Page 136

1 A I forgot about those.  
 2 Q How did the district come upon those?  
 3 A In those individual interviews with students.  
 4 Q Uh-huh.  
 5 A Two students in particular indicated they had  
 6 photos of Carol sleeping in that Social Studies  
 7 class.  
 8 Q And then they supplied those photos afterwards?  
 9 A Then we asked them, do you still have them? And  
 10 they said yes and then they supplied them to us.  
 11 Q And who did they give them to physically? Did  
 12 they give them to you or to someone else?  
 13 A I believe they gave them to me that day, but I  
 14 can't swear to that.  
 15 Q Did they email them to you or did they actually  
 16 print them out and hand them to you, or what?  
 17 A Again, I can't remember for sure how we were  
 18 given those.  
 19 Q But somehow from the kids, either you or someone  
 20 received copies of these photographs?  
 21 A I believe they were emailed, but I can't swear to  
 22 that. I would have to go back and check, but I  
 23 believe they were. But somehow, yes, two  
 24 students provided them to us.  
 25 Q All right. Now, as part of your investigation,

34 (Pages 133 to 136)

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Page 137	Page 139
<p>1 did you look at either Playboy or Playgirl to 2 determine whether, in your mind, they were -- 3 those publications were pornographic? 4 A No, I did not. 5 Q Had you, at some point -- were you already 6 familiar with Playboy and/or Playgirl? 7 A Yes. 8 Q Had you, at some point prior to that time, 9 personally viewed either Playboy and/or Playgirl? 10 MS. GRIGSBY: Objection. Irrelevant. 11 THE WITNESS: Yes. 12 BY MR. BELAZIS: 13 Q Had you reviewed both or just one? 14 A Just one. 15 Q Which one? 16 MS. GRIGSBY: Objection. Continuing 17 objection. 18 THE WITNESS: Playboy. 19 BY MR. BELAZIS: 20 Q Okay. And based on your inspection of Playboy, 21 by the way, how many times had you inspected a 22 Playboy? 23 A I don't have a clue. 24 Q More than once? 25 A More than once. It would have been when I was a</p>	<p>1 would pose for magazines like Playboy or Playgirl 2 early in their careers in order to get publicity, 3 to jump-start their careers? 4 A Yes, she did make that claim. 5 Q Okay. Now, looking at Exhibit 32, this first one 6 is Harrison Ford, right? 7 MS. GRIGSBY: 35? 8 MR. BELAZIS: 35. 9 THE WITNESS: Yes, seems to be. 10 BY MR. BELAZIS: 11 Q Can we, just glancing through these, can we agree 12 that these appear to be cover pages of Playgirl 13 magazines going back some years? 14 A Having not looked at Playgirl magazines, I would 15 assume they are, but I don't know. 16 Q Okay. And first one is a pic of Harrison Ford on 17 the cover; is that right? 18 A Uh-huh. 19 Q Well-known porn star, right? 20 A Not to my knowledge. 21 Q Paul Newman, do you regard him as a porn star? 22 MS. GRIGSBY: I'm going to object to 23 this line of questioning. 24 MR. BELAZIS: That's fine, you can 25 object.</p>
Page 138	Page 140
<p>1 young man. 2 Q Okay. And how young do you think you were when 3 you first inspected a Playboy? 4 MS. GRIGSBY: Continuing objection. 5 THE WITNESS: Late high school. Maybe 6 college, somewhere in that time frame. 7 BY MR. BELAZIS: 8 Q You're not sure? 9 A Not exactly sure, no, sir. 10 Q And you've never seen Playgirl? 11 A Other than in a news stand display where it's on 12 display in a magazine rack, never opened one up, 13 never looked at one. 14 Q But whatever they contained, you drew the 15 conclusion that they were pornographic? 16 A Yes. 17 Q Okay. Why don't we just -- 18 (Plaintiff's Exhibit 35 and 36 were marked and 19 attached.) 20 BY MR. BELAZIS: 21 Q Now, the first -- by the way, one of the things 22 that Mrs. Smith explained to you was that 23 sometimes well-known actors would pose, at least 24 your explanation of how it related to 25 journalistic sensationalism, is well-known actors</p>	<p>1 BY MR. BELAZIS: 2 Q Do you regard him as a porn star? 3 A Again, my knowledge of Paul Newman, no. 4 Q How about Chevy Chase, he's depicted in the next 5 one, right? 6 A That is Chevy Chase, yes. 7 Q You wouldn't regard him as a porn star? 8 A Not to my knowledge. 9 Q Robert Redford, you wouldn't regard him as a porn 10 star? 11 A Again, not to my knowledge. 12 Q What's his name? Burt Reynolds, you wouldn't 13 regard him as a porn star? 14 A I'm aware that Burt Reynolds has posed in some 15 risque photographs. 16 Q But you wouldn't regard him as a porn star, would 17 you? 18 A I would say that he is on the borderline in terms 19 of some of the things he's done. 20 Q Where have you seen those? 21 A Actually, Tony Packo's. 22 Q Tony Packo's restaurant? 23 A Yes. 24 Q Another well-known hangout for porn stars, right? 25 A That's right, yes.</p>

35 (Pages 137 to 140)

Page 141

1 Q How about Warren Beatty, do you regard him as a  
2 porn star?  
3 A I don't know Warren Beatty.  
4 Q You're not that young.  
5 A Seriously, I don't know him.  
6 Q How about John Travolta, you're familiar with  
7 him?  
8 A I'm familiar with John Travolta.  
9 Q Would you regard him as a porn star?  
10 A Not to my knowledge.  
11 Q All of these people we are naming, by the way,  
12 are all so far depicted on the cover page of  
13 Playgirl magazine, right?  
14 A Yes.  
15 Q How about John Ritter, are you familiar with him?  
16 A Yes.  
17 Q Do you regard him as a porn star?  
18 A No.  
19 Q How about Steve Reeves -- I'm sorry, Chris  
20 Reeves?  
21 A I'm not real familiar with Chris Reeves other  
22 than Superman.  
23 Q He played the part of Superman?  
24 A Yes.  
25 Q You wouldn't regard him as a porn star?

Page 142

1 A No, I wouldn't, not what I know about him.  
2 Q How about Robin Williams, he's a well-known porn  
3 star, isn't he?  
4 A Again, not that I'm aware of.  
5 Q All right. But he's depicted on this cover page  
6 also?  
7 A Yes, he is.  
8 Q All right. Jane Fonda, a little risque for you?  
9 A I don't know a whole lot about Jane Fonda.  
10 Q How about Jon Voight?  
11 A Again, I don't know a lot about Jon Voight.  
12 Q Dustin Hoffman and Meryl Streep, there's a porn  
13 couple if anybody ever saw one, right? Do you  
14 regard either one of them as porn stars?  
15 A Not to my knowledge.  
16 Q Meryl Streep, eight time Academy Award nominee,  
17 right?  
18 A I don't know.  
19 Q Right there in Playgirl magazine. Nick Nolte,  
20 he's one of the ones that was referenced by Mrs.  
21 Smith, isn't he?  
22 A Yes.  
23 Q Okay. Do you regard him as a porn star?  
24 A Not to my knowledge.  
25 Q Jack Nicholson, do you regard him as a porn star?

Page 143

1 A Not to my knowledge.  
2 Q Okay. How about Dudley Moore, or Liza Minnelli?  
3 A Not to my knowledge.  
4 Q So far, well-known, well-respected actors, right?  
5 A Most of member, I can't attest to some of them.  
6 Q Tom Selleck?  
7 A Not to my knowledge.  
8 Q Okay. Not to your knowledge, that he was either  
9 a risque actor or porn star, right?  
10 A That's correct.  
11 Q Sally Fields, now there's one, one would question  
12 her integrity, right?  
13 A I'm not questioning Sally's integrity.  
14 Q Do you regard her as a porn star?  
15 A Not to my knowledge.  
16 Q Do you think her appearance in Playgirl magazine  
17 is pornographic?  
18 A Do I think her appearance?  
19 Q Yes.  
20 A The picture you're showing me now?  
21 Q Well, do you think the fact that she appeared in  
22 Playgirl magazine as pornographic?  
23 A No.  
24 Q Who is this? Dan Aykroyd, would you regard him  
25 as --

Page 144

1 A I don't know a lot about Dan Aykroyd.  
2 Q You've never seen the Ghostbusters?  
3 A I'm saying, I don't know much about Dan Aykroyd.  
4 Q One of the great movies of all time.  
5 A In your opinion maybe.  
6 Q Let's see. Richard Geer, on the cover of  
7 Playgirl magazine.  
8 A Uh-huh.  
9 Q Another risque fellow?  
10 A He's done some risky things in his life.  
11 Q Clint Eastwood?  
12 A Uh-huh.  
13 Q Pretty risky also?  
14 A Not to my knowledge.  
15 Q All right. How about Ted Danson and Shelly Long  
16 from the show Cheers?  
17 A Uh-huh.  
18 Q Do you remember that?  
19 A Yes.  
20 Q Okay. Would you regard their appearance in  
21 Playgirl magazine as being pornographic?  
22 A No. Not from the picture you're showing me. I  
23 don't know what's inside each of these magazines.  
24 Q How about Matt Dillon?  
25 A I don't know.

36 (Pages 141 to 144)

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Page 145

1 Q Don't know him?  
 2 A Not much.  
 3 Q Mel Gibson, well-known porn star?  
 4 A Not to my knowledge.  
 5 Q Let's see, who is that? David Burn, do you know  
 6 him?  
 7 A No.  
 8 Q I'm sorry, maybe it's Rob Lowe. I don't know  
 9 him. Kevin Bacon?  
 10 A It's Kevin Bacon.  
 11 Q Right. Do you regard his appearance in Playgirl  
 12 magazine as being pornographic?  
 13 A Again, based upon the photo you're showing me,  
 14 no.  
 15 Q James Brolin?  
 16 A Based upon the photo you're showing me, no.  
 17 Q Brad Pitt?  
 18 A Again, not that I'm aware of.  
 19 Q Matt Damon?  
 20 A (Nod indicating no.)  
 21 Q No? Leonardo DiCaprio?  
 22 A I don't know, I don't know much about him.  
 23 Q He was in twice.  
 24 A Good for him.  
 25 Q Michael J. Fox?

Page 146

1 A That's who that is.  
 2 Q Okay. And then if we can look at what's been  
 3 marked as Exhibit 36.  
 4 A Uh-huh.  
 5 Q You're of course familiar with Barbara Streisand,  
 6 right?  
 7 A Yes.  
 8 Q Okay. So it's fair to say, of course, that the  
 9 actors that we just went through in these two  
 10 exhibits are among the most well-known actors of  
 11 our generation?  
 12 MS. GRIGSBY: Objection.  
 13 THE WITNESS: I don't know. There is a  
 14 lot -- there are hundred and thousands of actors.  
 15 BY MR. BELAZIS:  
 16 Q And would you agree with me that their presence,  
 17 that their decision to be depicted in Playgirl or  
 18 Playboy magazine, the ones that we reviewed here  
 19 would reflect some effort to further their  
 20 career?  
 21 MS. GRIGSBY: Objection.  
 22 THE WITNESS: I don't have any clue as  
 23 to why each of those individuals would have  
 24 chosen to do that.  
 25 BY MR. BELAZIS:

Page 147

1 Q Okay. And would you agree that their decision to  
 2 be depicted in these magazines would be an  
 3 example of sensationalistic journalism?  
 4 A No.  
 5 MS. GRIGSBY: Objection.  
 6 BY MR. BELAZIS:  
 7 Q Do you want to take a look --  
 8 A You didn't bother to pull the centerfold out from  
 9 each of these magazines and show those.  
 10 Q I'll leave that to you.  
 11 A Oh.  
 12 Q Okay. Up until the point that you decided to  
 13 interview these students -- by the way, did you  
 14 interview Danielle Mallot as part of your  
 15 investigation, that you can recall?  
 16 A I do not believe we did.  
 17 Q Okay. She's faculty, right?  
 18 A She is.  
 19 Q Not a student?  
 20 A No.  
 21 Q Okay. And you're aware that she was assigned to  
 22 this Social Studies class? In fact, she's the  
 23 one that you say brought it to your attention?  
 24 A Correct.  
 25 Q Up until that point was there any other class in

Page 148

1 which you interviewed all the students in  
 2 connection with some investigation involving a  
 3 teacher at Perkins Schools?  
 4 A No.  
 5 Q Oh, of course, last, but not please, I almost  
 6 forgot, you, of course, are aware by now that the  
 7 1984 yearbook, Perkins High School had a photo in  
 8 it, and would you confirm that we are looking at  
 9 the 1984 yearbook for Perkins High School?  
 10 A As far as I know, I've never seen it before.  
 11 Q As far as you know, that's what it is, right?  
 12 A Yes.  
 13 Q Certainly appears to be, right?  
 14 A It appears to be.  
 15 Q And would you describe for the record what's  
 16 depicted on page 50 in the bottom left-hand  
 17 corner?  
 18 A A group of students looking at, it looks like a  
 19 copy of a Playgirl magazine with Harrison Ford on  
 20 the cover that you previously showed me.  
 21 Q And what are the girls doing?  
 22 A Covering their mouth as if in shock or surprise  
 23 of the picture they were looking at.  
 24 Q And the magazine, and the picture depicted is  
 25 open, correct?

37 (Pages 145 to 148)

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Page 149

1 A I cannot tell what they are looking at.  
 2 Q That's what it looks like?  
 3 A It doesn't show. I don't know if they have the  
 4 full magazine there, they have a part of the  
 5 magazine there, whether it's open or whether it's  
 6 closed, you know, it's hard to tell.  
 7 Q And do you regard this as pornographic?  
 8 MS. GRIGSBY: What, the picture of the  
 9 girls looking at it?  
 10 MR. BELAZIS: Right.  
 11 THE WITNESS: The picture of the girls  
 12 looking at it, no.  
 13 BY MR. BELAZIS:  
 14 Q Do you regard the decision to include that  
 15 photograph in the 1984 yearbook as being  
 16 pornographic?  
 17 MS. GRIGSBY: Objection. Relevancy.  
 18 THE WITNESS: The answer is yes, I  
 19 would not have permitted it.  
 20 BY MR. BELAZIS:  
 21 Q Are you aware of whether there was any  
 22 ramifications, concern, complaint related to  
 23 this?  
 24 A I have no idea. That was 24 years before I  
 25 arrived in Perkins.

Page 150

1 Q Would you agree that this would reflect what the  
 2 Perkins community regards as being appropriate  
 3 and inappropriate?  
 4 MS. GRIGSBY: Objection.  
 5 THE WITNESS: No, I would not.  
 6 BY MR. BELAZIS:  
 7 Q By the way, whenever it was that you asked for --  
 8 that you viewed Playboy magazine, did you ask  
 9 your parents' permission before looking at it?  
 10 MS. GRIGSBY: Objection.  
 11 THE WITNESS: No, sir.  
 12 (Plaintiff's Exhibit 37 was marked and attached.)  
 13 MS. GRIGSBY: I'm sorry, what's the  
 14 number on that?  
 15 THE WITNESS: 37.  
 16 BY MR. BELAZIS:  
 17 Q You know, I'm sorry, I don't remember, but I  
 18 just -- just for the record, I may have already  
 19 done this, I'm sorry, because I have a mind like  
 20 a seal.  
 21 (Plaintiff's Exhibit 13 was referred to.)  
 22 BY MR. BELAZIS:  
 23 Q What's marked as Plaintiff's Exhibit 13, could  
 24 you identify that as containing your notes? I  
 25 believe, Mr. Gasteier already identified his

Page 151

1 portion of it.  
 2 A These look like the notes that I typed as I  
 3 interviewed individual students on the Friday  
 4 night and the copies of the pictures that were  
 5 provided, and it looks like some handwritten  
 6 notes that Mr. Gasteier took where he concluded  
 7 the interviews that day.  
 8 Q And do you also have access to Mr. Gasteier's  
 9 notes?  
 10 A Yes, sir. And then I also concluded, it looks  
 11 like, written statements, copies of the written  
 12 statements of each of the students.  
 13 Q And you have those?  
 14 A Yes.  
 15 (Plaintiff's Exhibit 16 was referred to.)  
 16 BY MR. BELAZIS:  
 17 Q And, again for the record, the photographs that  
 18 we have been talking about that are of the  
 19 students, are those marked as Plaintiff's  
 20 Exhibit 16; is that correct?  
 21 A To the best of my knowledge, these look like the  
 22 photos that day.  
 23 Q Okay. All right. So now we just marked another  
 24 exhibit. What was it?  
 25 A 37.

Page 152

1 Q All right. So directing your attention to  
 2 Plaintiff's Exhibit 37, can you tell me what that  
 3 is?  
 4 A The first page is a letter to Mrs. Smith from the  
 5 Perkins Board of Education, signed by the  
 6 treasurer of the Board of Education indicating  
 7 the board took action at its November 10th  
 8 meeting to adopt a resolution accepting the  
 9 recommendation of Referee Harry A. Taich and  
 10 ultimately the resolution to terminate her  
 11 teaching contract effective immediately. The  
 12 following three pages are the actual formal  
 13 resolution itself.  
 14 Q Just going back, I'm sorry, for a moment. With  
 15 regard to the question of her being late to class  
 16 every day to her Social Studies class on somewhat  
 17 of a regular basis, you're aware, of course, that  
 18 she had to travel some distance from her class in  
 19 room, I think, 702 I think is what it was or  
 20 right around there, down to Room 61?  
 21 A I'm aware of the allegations.  
 22 Q Right.  
 23 A But the allegations mostly from the students  
 24 pertained to late to study hall at times and also  
 25 to class, it wasn't just the beginning of that

38 (Pages 149 to 152)

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Page 153

1 class where she had to make that travel.  
 2 Q Okay. Well, we can look at your notes and see  
 3 what they say about that, but --  
 4 Okay. And in your disciplinary  
 5 citation, it doesn't make any reference to study  
 6 hall, does it? It just refers to fifth period  
 7 study -- fifth period history class. You can  
 8 look at it if you want.  
 9 A I don't think I have that copy.  
 10 Q Okay. Look at it. So I do.  
 11 A No, it does not. It doesn't distinguish it as  
 12 the study hall.  
 13 Q Not only does it not distinguish it, it specifics  
 14 that she is charged with being tardy to her fifth  
 15 period history class, right?  
 16 A Correct.  
 17 Q History class is different than study hall,  
 18 right?  
 19 A It's all part of the same period when she has the  
 20 kids. She's responsible for the entire --  
 21 Q Well --  
 22 MS. GRIGSBY: Let him finish.  
 23 THE WITNESS: She's responsible for the  
 24 entire fifth period. On the schedule it says  
 25 fifth period history, it doesn't distinguish

Page 154

1 study hall from that class.  
 2 BY MR. BELAZIS:  
 3 Q Okay.  
 4 MR. BELAZIS: Can we take break again?  
 5 (Off the record.)  
 6 BY MR. BELAZIS:  
 7 Q Okay. Now, looking just briefly again at  
 8 Exhibit 11, that's the -- is that 11?  
 9 A Yes.  
 10 Q Those are the charges that you composed or  
 11 issued?  
 12 A Well, 11 is the original letter that I relieved  
 13 her, the first letter.  
 14 Q Right.  
 15 A I was relieving her of her duties. And the only  
 16 allegation of that is inappropriate discussions  
 17 regarding class pornography.  
 18 Q Well, I'm sorry, the second page?  
 19 A All right.  
 20 Q The allegations that were made involved your,  
 21 first of all, your allegation related to  
 22 discussion of pornography, right?  
 23 A Yes.  
 24 Q And secondly, your allegation that she dozed off  
 25 for several minutes while supervising students in

Page 155

1 5-D study hall, correct?  
 2 A Yes.  
 3 Q You specified 5-D study hall, correct?  
 4 A Uh-huh.  
 5 Q And then your, finally your allegation that she  
 6 arrived tardy to her fifth period history class,  
 7 right?  
 8 A That is correct.  
 9 Q Again, it doesn't say anything about 5-D study  
 10 hall, this refers to history class?  
 11 A That is correct.  
 12 Q And I take it that study hall is not part of --  
 13 well, withdraw that.  
 14 And then on April 5, part of the same  
 15 exhibit, you then specify the disciplinary items  
 16 of which she's charged, right, on the first page?  
 17 A Yes.  
 18 Q And, again, you refer to dozing off while  
 19 supervising students in 5-D study hall, right?  
 20 A Yes.  
 21 Q And, again, you refer to arriving tardy during  
 22 her fifth period history class, right?  
 23 A Yes.  
 24 Q And then your April 13th letter, it specified  
 25 that grounds for termination that you would

Page 156

1 recommend to the board, you specify, in addition  
 2 to the pornography issue, dozing off in 5-D study  
 3 hall, right?  
 4 A Yes.  
 5 Q And, again, you reference alleged tardiness in  
 6 fifth period history class, right?  
 7 A Yes.  
 8 Q No reference to 5-D study hall, right? Correct?  
 9 A Previous reference to 5-D study hall.  
 10 Q With respect to the issue of tardiness.  
 11 A Not specifically delineated as 5-D study hall,  
 12 no.  
 13 Q And in your subsequent letter the next day dated  
 14 April 14th, same thing, right?  
 15 A Correct.  
 16 Q Okay. So then we were looking at what's been  
 17 marked as Plaintiff's Exhibit?  
 18 A 37.  
 19 Q 37. And I think you've already identified this.  
 20 Why don't you identify it again just to make  
 21 sure.  
 22 A The first page is a letter sent to Carol Smith by  
 23 the Board of Education, Lisa Crescimano, the  
 24 treasurer, signed it, informing Carol that the  
 25 board met on November 10th, 2010, adopted a

39 (Pages 153 to 156)

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Page 157

1 resolution accepting the Report of Recommendation  
2 of Referee Harry A. Taich, dated October 9, 2010,  
3 concerning her teaching contract and basically  
4 the resolution also terminated her teaching  
5 contract effective immediately. The next three  
6 pages are a copy of the board resolution that day  
7 signed by the then president and also the  
8 treasurer, Lisa Crescimano.

9 Q Okay.

10 A The president being Brian Printy, Dr. Brian  
11 Printy.

12 Q Tell me what the process was in the -- at the  
13 board level when the board voted on the  
14 recommendations that you had made for  
15 termination?

16 MS. GRIGSBY: Prior to the termination  
17 hearing?

18 BY MR. BELAZIS:

19 Q Yes. And that would have been referenced in  
20 exhibit, it was referred to initially as Exhibit  
21 11, and it's also referred to, I think, in  
22 Exhibits 33 and 34. 11 was your recommendation  
23 to the board and then 33 and 34 I think are the  
24 documents reflecting the board action.

25 A Okay.

Page 158

1 Q Yes?

2 A Exhibit 33 is basically a letter to Mrs. Smith  
3 indicating that -- "On April 14, 2010 the Board  
4 of Education adopted a resolution regarding its  
5 intent to consider the termination." And  
6 Exhibit 34 is that Resolution of Intent. And if  
7 you're referring back then to article, or  
8 Exhibit 11, the letter dated April 14th is a  
9 letter that I wrote to her and hand delivered and  
10 indicated that it was my intent to recommend the  
11 board to take that action.

12 Q Okay. And so describe the process that occurred  
13 in connection with the board vote?

14 A On the agenda is a section for superintendent  
15 recommendations both on personnel, and there's  
16 another section on non-personnel items. Under  
17 the section under personnel, there was a brief  
18 description of my recommendation to the board to  
19 basically begin the process for the termination  
20 of the teaching contract of Carol Smith. When  
21 that -- in a typical board meeting, when that  
22 section comes up, the board president will read  
23 the introduction to the section and then turn it  
24 over to me to explain any items on the agenda.  
25 There may be one, there may be several. And in

Page 159

1 this particular agenda, I don't remember whether  
2 this was the sole item under that area or there  
3 were others, they briefly commented to the board  
4 that you were aware that we had had ongoing  
5 disciplinary concerns regarding Carol Smith, and  
6 unfortunately, after multiple disciplinary  
7 efforts haven't changed the behavior, that it is  
8 with regret that I recommend you to begin the  
9 process of terminating her employment. The  
10 board --

11 Q This is the discussion during executive session?

12 A This would have been a public session.

13 Q Oh, public, okay.

14 A Yes. The board I don't believe asked any, in  
15 this particular instance, asked any serious  
16 questions publicly out of respect to Carol. And  
17 also feeling that they had been well informed  
18 throughout the process by me, and ultimately then  
19 took a vote to pass that segment of the agenda;  
20 in particular, this resolution. If I recall  
21 correctly, I think it was Mr. Kosior who, as it's  
22 indicated here, who moved the adoption for the  
23 resolution. And Mr. Reddaway who seconded it and  
24 it was a unanimous vote of the board to adopt the  
25 resolution.

Page 160

1 Q Okay. And then following, there was a  
2 disciplinary hearing as you know, right?

3 A There was a termination hearing, yes.

4 Q And you were present for that?

5 A Yes.

6 Q Every day?

7 A Yes.

8 Q You were basically the board's representative or  
9 the district's representative?

10 A Correct.

11 Q And following that termination hearing there was  
12 a recommendation by the hearing officer to  
13 terminate; is that right?

14 A Yes.

15 Q But on fewer grounds than what was originally  
16 adopted by the board; is that correct?

17 A The hearing officer's recommendations, as I  
18 recall it, indicated the board had proven all  
19 three grounds, that it was the hearing officer's  
20 opinion that Mrs. Smith was guilty of all three,  
21 but that the single allegation of pornography was  
22 not, in his mind, enough to justify termination,  
23 but the allegations of repeated tardiness and  
24 sleeping were. And so his recommendation was for  
25 termination under, I see it referenced as Items B

40 (Pages 157 to 160)

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Page 161

and C, which were the references to sleeping and excessive tardiness.

Q And then same thing, describe the process that the board agreed to with regard to that?

A You know, that would have been in November of 2010. It would have been my understanding that there was an executive session to discuss discipline of employee at that stage.

MS. GRIGSBY: And with respect to the communications in executive session, Paul, you and I have discussed this, I believe that to be privileged, and I do not want to waive that privilege at this point because it's not my privilege to waive. And so at this point I think I'm going to instruct you not to disclose the contents of the executive session.

MR. BELAZIS: I thought we agreed, we simply agreed that there would be testimony about it and then --

MS. GRIGSBY: Or seal it so long as by doing so, you're not going to later assert there has been a waiver.

MR. BELAZIS: I think you just preserved your right to contest it at a later time.

Page 163

Q Okay.

A Again, I believe that was a 5-0 vote. If I recall correctly there, I believe Mr. Chapman made the initial reference or the initial adoption of the resolution and, again, my memory is -- I'm not sure if it was Mr. Kosior who seconded or not.

Q All right. With respect to the initial adoption of your recommendations, there was just a single vote on all three charges, in other words, they didn't vote on them separately?

A That is correct, they did not.

Q And there was no determination as to whether or not each one of them was separately sufficient to justify termination?

A No, there was not.

Q Okay. And that would be true also with respect to their subsequent vote to adopt the referee's decision?

A That is correct.

Q All right. Just going back for a second to the question of her -- of Mrs. Smith's tardiness to fifth period history class.

A Uh-huh.

Q I started to ask you earlier about, there has

Page 162

MS. GRIGSBY: So do we have an understanding that if he talks about it, that if I permit him to disclose the contents of the executive session, that portion of the testimony would be under seal, and subject to later ruling on the applicability or decision to waive that privilege?

MR. BELAZIS: That was our discussion and that's our agreement.

MS. GRIGSBY: Okay, very good.

THE WITNESS: In relationship to the executive session that day, quite frankly my recollection is it was a very short discussion. The board reviewed in particular the summary from Referee Taich, that they had previously received a copy of electronically. There was, I think, a general reference from board president, Dr. Printy, to each individual board member, do any of you have concerns about taking this action, do you support the action? And then within a, I think it was a very, very short period of time, I can't give you a time length, we came right back out of executive session and the board took action to approve the recommendation from Referee Taich.

Page 164

been quite a bit of testimony already, but the fact that she had to travel some distance in order to get from 702 down to 601, and you were at the hearing; again, you recall that?

A I recall there was some testimony on that, yes.

Q Okay. And you're aware that she had to travel from 601 to 702? I may be off by a door, but it's --

A I was aware during the hearing. I don't know that I was aware prior to that.

Q That was my question. Mr. Gasteier never brought that to your attention?

A Not that I recall.

Q And he never brought to your attention that Mrs. Smith had previously told him that, because of her physical condition, she was unable to manage that distance to get there on time every day?

MS. GRIGSBY: Objection.

THE WITNESS: My recollection is I learned about that in the termination hearing. I don't recall a previous conversation.

BY MR. BELAZIS:

Q And with respect to the information that you conveyed during the following hearing and/or in connection with it, what exactly did you convey

41 (Pages 161 to 164)

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Page 165

1 to the -- strike that. Let me start again.  
 2 You were obviously, you've already  
 3 said, present during the termination hearing,  
 4 correct.  
 5 A Yes.  
 6 Q Do you recall what, if any, information you  
 7 conveyed in executive session to the board  
 8 regarding the testimony of the termination  
 9 hearing?  
 10 MS. GRIGSBY: Subject to the same  
 11 parameters we spoke of, you can answer that  
 12 question.  
 13 BY MR. BELAZIS:  
 14 Q Yes?  
 15 A I don't believe I informed them of any specific  
 16 testimony at all. I would give them a brief  
 17 verbal overview of how my perception of the  
 18 testimony was going or how the hearing was going.  
 19 I may have, you know, but I don't recall  
 20 specifically pointing out individual testimonies.  
 21 Q Okay. What about in general, do you recall  
 22 describing in general terms to them what the  
 23 testimony had been at the hearing?  
 24 A In general terms, yes.  
 25 Q What did you tell them?

Page 166

1 A To my best recollection, again, most of this  
 2 would have been verbal in executive session,  
 3 would be that I thought the hearing was going  
 4 well, I thought that the testimonies were strong  
 5 and positive in terms of the Board's position,  
 6 that both the students, and we had many students  
 7 testify, that they had done a very good job of,  
 8 in a very difficult situation, of testifying. I  
 9 expressed to the board that some of their parents  
 10 were not happy with us because we ultimately  
 11 required them to testify, that the teacher  
 12 testimonies were fairly favorable in support,  
 13 that overall I felt that our attorney had  
 14 presented a fairly strong case.  
 15 Q Anything else you can think of?  
 16 A You know, I don't know if I did, or at what  
 17 length I would have had a conversation. I know I  
 18 was disappointed in Mr. Gasteier's testimony.  
 19 Q And so what was it that you cited about Mr.  
 20 Gasteier's testimony to the board?  
 21 A I can't remember specifics. My recollection of  
 22 the disappointment was there was certainly  
 23 evidence prior to my arrival in 2008 of some  
 24 concerns with Carol that he failed to act on,  
 25 that were brought to him in particular by his

Page 167

1 assistant principal Mark Dahlman, and there's no  
 2 evidence that he acted on them at all. There's  
 3 no evidence in the personnel file, there's no  
 4 evidence in her evaluations. That frustration is  
 5 that he was very evasive in his answers, and  
 6 instead of being, what I felt would be, you know,  
 7 direct and upfront and honest, it was, the  
 8 testimony seemed to be a lot of I don't know, I  
 9 don't remember, I can't recall throughout the  
 10 testimony as I remember it.  
 11 Q And so he wasn't as -- your disappointment was he  
 12 was not as direct as you expected he would be or  
 13 you expected he should be?  
 14 A Disappointed was two-fold. The more I found out  
 15 about the history of some of the things that had  
 16 happened prior to my arrival that had not been  
 17 addressed, the more disappointed I became in his  
 18 leadership in not addressing them, you know,  
 19 before they ended up in my lap. And the sense of  
 20 frustration of that's how Mr. Gasteier was in his  
 21 leadership, is afraid to take a stand, try to  
 22 please everybody. Many times a decision was made  
 23 simply not to make a decision and to allow, in  
 24 essence, employees to draw their own conclusions  
 25 about how to proceed on issues. And more and

Page 168

1 more sitting in the hearing I recall remembering  
 2 a lot more concern about that. And I know I  
 3 expressed that to the board. I don't know if I  
 4 expressed it to the board in that time frame or  
 5 in subsequent evaluations or what, I'm not sure.  
 6 MR. BELAZIS: Unfortunately I don't  
 7 have a copy of this, so we'll just have to mark  
 8 one and we can certainly make a copy.  
 9 MS. GRIGSBY: I'm going to stand and  
 10 look over your shoulder. We can make the copy  
 11 later.  
 12 THE WITNESS: I assume you want me to  
 13 pay particular attention to what you've  
 14 highlighted here?  
 15 BY MR. BELAZIS:  
 16 Q I just want to ask you whether you recognize  
 17 those as among the board minutes that you  
 18 prepared and submitted to the board.  
 19 A These are my board notes that I, part of what I  
 20 would do on a weekly basis, yes.  
 21 Q Okay. You subsequently removed Mr. Gasteier from  
 22 his position as principal of the high school?  
 23 A I gave him an ultimatum and an alternative, yes.  
 24 Q Okay. And the alternative was to become  
 25 communications director?

42 (Pages 165 to 168)

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Page 169

1 A Yes.  
 2 Q So that he would retire and then become  
 3 communications director?  
 4 A Yes.  
 5 Q Was there a position of communications director  
 6 prior to the time it was offered to him?  
 7 A No, there was not.  
 8 Q You created that position for him?  
 9 A Yes, I did.  
 10 Q Did Mr. Gasteier ever personally ask you for any  
 11 accommodations for disability?  
 12 A No, sir.  
 13 Q So I guess, just to go back to the point, other  
 14 than what you've already described to me, there  
 15 wasn't anything else in executive session that  
 16 you related to the board about the testimony at  
 17 the disciplinary hearing?  
 18 A You know, again, I don't recall specific  
 19 conversations with the board. In general, I  
 20 remember giving them a general overview.  
 21 (Plaintiff's Exhibit 39 was marked and attached.)  
 22 MS. GRIGSBY: The single copy was  
 23 marked as 38, so this would be 39?  
 24 THE WITNESS: Yes.  
 25 MS. GRIGSBY: Okay.

Page 171

1 Q Is it a he or she?  
 2 A It's a he. That much I don't remember. I don't  
 3 remember his name. He had had a previous  
 4 conversation with our attorney who was well aware  
 5 of the circumstances surrounding the case. Most  
 6 of the information was obtained in that  
 7 conversation. The conversation with me was more  
 8 about, again, media relations, how do you move  
 9 forward, here are some of the key questions  
 10 you're likely to be asked and let me draft some  
 11 generic answers for you and the board.  
 12 Q Okay. So these were eventually transmitted to  
 13 you and then you reviewed them and transmitted  
 14 them to the board?  
 15 A Yes.  
 16 Q On the first page it indicates as one answer to  
 17 provide in connection with questions about Ms.  
 18 Smith's termination, "The district has  
 19 recommended and made accommodations for any  
 20 medical issue she might have and has counseled  
 21 her on her behavior."  
 22 A Where are you referring to, sir?  
 23 Q Page 1.  
 24 A Okay. Down at the last question.  
 25 Q Right. So what accommodations were made from

Page 170

1 BY MR. BELAZIS:  
 2 Q Okay. You have been handed what's been marked as  
 3 Plaintiff's Exhibit 39, do you recognize it?  
 4 A Yes.  
 5 Q And what is it?  
 6 A The cover page and the first page is an email  
 7 from myself to the Board of Education, and Lisa  
 8 Crescimano indicating that the document that  
 9 follows or is attached was prepared by the media  
 10 consultant to assist the board in addressing  
 11 answers to questions regarding Carol Smith and  
 12 the particular case at that time.  
 13 Q Okay. Who was the media consultant?  
 14 A Off the top of my head, sir, I do not remember.  
 15 Q And who retained the media consultant?  
 16 A As I believe, sir, it was our attorney who  
 17 recommended somebody.  
 18 Q Who was the person that met with the media  
 19 consultant?  
 20 A There was no face-to-face meeting. I had a phone  
 21 conversation with the media consultant, one time.  
 22 Q And you provided her with information that she  
 23 used to develop these key messages, talking  
 24 points?  
 25 A He had --

Page 172

1 your prospective from the district and for what  
 2 medical issues?  
 3 A It was my understanding that the letter I had  
 4 sent her making accommodations for her diabetes,  
 5 and those were the only accommodations that she  
 6 had ever asked me for.  
 7 Q Okay. There were some issues about parents, as I  
 8 understand it, who had taken the position that  
 9 their children were forced to give statements  
 10 during your investigation of the final  
 11 disciplinary issue that arose when you  
 12 interviewed students?  
 13 A Uh-huh.  
 14 Q How many parents, as far as you became aware, how  
 15 many parents made that kind of an allegation?  
 16 A I was aware of one parent who had some concerns.  
 17 There may have been more. There was only one  
 18 parent who I believe approached me directly.  
 19 Q Who was that?  
 20 A I don't recall who it was, sir.  
 21 Q What did they say?  
 22 A They just voiced concerns about the process of,  
 23 you know, two adults with a 14, 15-year-old  
 24 student asking them questions without the parent  
 25 having the right to be there.

43 (Pages 169 to 172)

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Page 173

1 MR. BELAZIS: And let me -- again, I'll  
2 make a copy of this, I'm sorry, but we can make  
3 one, let's mark that.  
4 (Plaintiff's Exhibit No. 40 was marked and  
5 attached.)  
6 BY MR. BELAZIS:  
7 Q Show it to your counsel first, Mr. Gunner.  
8 MS. GRIGSBY: Did you mean this to be  
9 part of that?  
10 THE WITNESS: Yes, that's part of it.  
11 That's usually how I entered my notes, trying to  
12 get it in calendar format.  
13 BY MR. BELAZIS:  
14 Q So, first of all, if you could identify that, are  
15 those your board notes?  
16 A These are my board notes to the board dated  
17 April 17, 2010.  
18 Q And it is marked as?  
19 A Exhibit 40.  
20 Q And those are notes that you transmitted to the  
21 board at that point in time?  
22 A Yes, sir.  
23 Q And based on your board notes at least there were  
24 three parents who came forward and indicated that  
25 their children had been forced to provide

Page 175

1 reported?  
2 A Yes, absolutely.  
3 Q And then did you subsequently meet with  
4 representatives of the Ohio Department of  
5 Education?  
6 A Yes, I believe he did.  
7 Q And I take it that you conveyed to them  
8 information about the allegations against Mrs.  
9 Smith from your perspective?  
10 A I don't recall the context of the meeting. I  
11 know I was contacted by representatives from ODE  
12 after notifying them. I know that they received  
13 a full copy of Referee Taich's hearing decision  
14 and also full copies of the entire termination  
15 hearing. I know that those were in their  
16 possession.  
17 Q But did you provide them with information about  
18 facts that you believed to have been uncovered  
19 during your investigation?  
20 A Nothing that was not presented in that entire  
21 line as well, nothing different or unique to  
22 them.  
23 Q I guess my question is whether you provided them  
24 with -- regardless of whether you reviewed the  
25 Referee's decision, did you provide them with

Page 174

1 information in connection with your  
2 investigation?  
3 A Again, the way this is is that Steve Schuster,  
4 who was a board member at the time, shared with  
5 Lisa, who was my treasurer, who then shared with  
6 me, the three parents had approached the Sandusky  
7 Register and made that complaint. To my  
8 recollection, only one parent spoke to me.  
9 Q Now, following Mrs. Smith's termination, the  
10 district submitted some information to the Board  
11 of Education?  
12 A Yes.  
13 Q I'm sorry, the Ohio Department of Education?  
14 A Yes. I have an obligation to report potential  
15 misconduct to the Ohio Department of Education,  
16 yes.  
17 Q What's your understanding of the type of  
18 misconduct that is required to be reported?  
19 A Certainly anything where the employee has been  
20 convicted of a felony, anything where an employee  
21 has been involved in a drug conviction, any  
22 action taken by the board that would include the  
23 termination of an employee, are all reportable to  
24 the Ohio Department of Education.  
25 Q So basically anytime there is a termination, it's

Page 176

1 information?  
2 MS. GRIGSBY: Do you mean apart from  
3 the documents he spoke of?  
4 MR. BELAZIS: The only document he  
5 spoke of was the Referee's decision.  
6 THE WITNESS: Well, the complete  
7 transcript of the hearing is my recollection.  
8 BY MR. BELAZIS:  
9 Q Okay. So they apparently had that, that was your  
10 understanding anyway?  
11 A Right.  
12 Q Okay. So aside from that, did you supply them  
13 with information?  
14 A I remember a phone conversation with them. I  
15 don't remember specifically handing them any  
16 documents or, you know, I would have answered  
17 whatever questions they asked me at that time.  
18 Q Okay. Did you become aware of a member of the  
19 faculty who had, during his Social Studies class,  
20 shown a video of someone who was being beheaded  
21 by -- well, someone being beheaded?  
22 A I became aware during the termination hearing.  
23 It was an accusation made against a Tim  
24 Obergefell in a Social Studies classroom the year  
25 prior to my arrival of showing such a video, yes.

44 (Pages 173 to 176)

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Page 177

- 1 Q And did you follow up in any way to what you  
2 found out?
- 3 A Again, it happened prior to my arrival. I assume  
4 that the previous administration had handled and  
5 addressed the issue. I was told, though I don't  
6 believe I ever saw it, that there was a written  
7 reprimand issued to him at the time by my  
8 predecessor, but I don't recall ever seeing it.
- 9 Q Okay. Do you have any information about what the  
10 nature of the -- I mean, anymore specific  
11 information about the nature of the video?
- 12 A No.
- 13 Q Who it depicted?
- 14 A It had to do obviously with the crisis going on  
15 in the Mid East at that time, and, you know, the  
16 television news was displaying similar types of  
17 video. So they had something to do with the Mid  
18 East. I don't know any more than that.
- 19 Q Okay. There was a decision made to hire a new  
20 business teacher during the 2010-2011 school  
21 year, that was when the new business teacher  
22 began; are you aware of that?
- 23 A I'm just trying to recall the time frame if  
24 that's accurate.
- 25 Q Whenever it was, you recall that there was --

Page 178

- 1 that a new business teacher was hired?
- 2 A Yes, yes.
- 3 Q And do you recall if that teacher was hired  
4 full-time?
- 5 A Yes.
- 6 Q And do you know what classes that teacher taught?
- 7 A Off the top of my head, I do not.
- 8 Q And do you recall why a determination was made to  
9 hire a full-time business teacher?
- 10 A The intent was to try to rebuild the business  
11 program from the limited business classes we had  
12 as part of an effort as we were moving forward  
13 with the progression towards STEM academies, or  
14 at least three or four different academies. At  
15 the time we were considering business as a  
16 separate focal academy for students, and we felt  
17 that if we could find the right person, we could  
18 build student interest enough to warrant it  
19 full-time and possibly even more business  
20 teachers.
- 21 (Off the record.)
- 22 BY MR. BELAZIS:
- 23 Q Is there any reason why the same objectives could  
24 not have been achieved with Mrs. Smith?
- 25 A The department itself had significantly decreased

Page 179

- 1 in size under Ms. Smith's leadership.
- 2 Q Okay. And now?
- 3 A Actually looking at the numbers for next year,  
4 and just to step back a second, last year  
5 reductions, we reduced the business position back  
6 to half time. So currently, it is a half time  
7 position. Based upon student's signup for next  
8 year, it looks like the position will be restored  
9 to full-time.
- 10 Q So last year would have been --
- 11 A This current school year, I'm sorry.
- 12 Q So that's 2013-2014?
- 13 A Correct.
- 14 Q Okay. So your new teacher came in, if I --
- 15 A '11 and '12.
- 16 Q For the record, '11 and '12?
- 17 A Uh-huh.
- 18 Q And then '12-'13, she was reduced to a part-time  
19 position?
- 20 A Yes.
- 21 Q And this year she's again a part-time position?
- 22 A No. We reduced her to a part-time position in  
23 this year, '13-'14. She was full-time '11-'12,  
24 '12-'13.
- 25 Q But after two years the numbers were still too

Page 180

- 1 low to justify a full-time position?
- 2 A That is correct.
- 3 Q But you maintained her on a full-time basis  
4 anyway for those two years?
- 5 A For those two years, yes, sir.
- 6 Q And, let's see, when is registration for next  
7 year?
- 8 A Registration typically starts in the January and  
9 February time frame.
- 10 Q And what does it continue until?
- 11 A Usually it continues up through the first day of  
12 school honestly, but typically, we make final  
13 staffing decisions in the May time frame at the  
14 latest.
- 15 Q Okay. Does the district have an EEO policy?
- 16 A Yes, sir.
- 17 MR. BELAZIS: I have asked for that a  
18 few times.
- 19 MS. GRIGSBY: You know, I have learned  
20 that there's such a policy and I will get it to  
21 you.
- 22 BY MR. BELAZIS:
- 23 Q And was it in effect when you arrived at the  
24 Perkins School District?
- 25 A Yes, sir.

45 (Pages 177 to 180)

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Page 181

1 MR. BELAZIS: I have to -- once I get  
2 it?  
3 MS. GRIGSBY: You may need to ask  
4 questions of him about that.  
5 MR. BELAZIS: Yes.  
6 MS. GRIGSBY: I understand.  
7 THE WITNESS: I'm not sure why you  
8 don't have it already.  
9 BY MR. BELAZIS:  
10 Q Too many moving parts.  
11 A You've asked for a lot of documents, that's for  
12 sure.  
13 Q When you -- you've looked at Ms. Smith a number  
14 of times in the course of your encounters with  
15 her; in other words, you've seen her face?  
16 A Yes.  
17 Q And I take it you've noticed that one of her two  
18 eyes is frequently closed?  
19 MS. GRIGSBY: Objection.  
20 THE WITNESS: I would say that I have  
21 noticed that one of her two eyes is -- I wouldn't  
22 say closed, but certainly squinting or certainly  
23 obviously not fully open.  
24 BY MR. BELAZIS:  
25 Q And do you know why that is?

Page 182

1 A I attribute it to her diabetes, that's the only  
2 complaints she ever brought forward to me.  
3 Q The other eye when you see her is open?  
4 A Most of the time, frequently, yes.  
5 Q Okay. And what do you mean by most of the time?  
6 A There are times in the hearings I have had with  
7 her that she would be like this, it's hard to see  
8 her eyes.  
9 Q In other words, and just for the record, you were  
10 being, had your hand above your brow and  
11 indicating that she was covering her eyes  
12 partially with her hand, right? I mean, that's  
13 what you just showed. I'm just asking you if  
14 that accurately characterizes what you did.  
15 A I don't know if she was covering her eyes or if  
16 she was resting her hand, but it certainly was,  
17 from another person sitting at the table, made it  
18 difficult to observe her eyes during those time  
19 frames.  
20 Q Okay. But my -- all I asked you was this. I  
21 want the record to be clear about what you did a  
22 moment ago when you described what you saw Mrs.  
23 Smith do during the hearings.  
24 A Right.  
25 Q And what you did was to put your elbow on the

Page 183

1 table?  
2 A Correct.  
3 Q You put your hand above your brow?  
4 A Correct.  
5 Q And covered your eyes in part, correct, with your  
6 hand?  
7 A Well, the hand was above the brow, and I didn't  
8 deliberately try to cover my eyes. I was trying  
9 to demonstrate how she sometimes appeared during  
10 the hearings.  
11 Q Okay. And did you observe her during the  
12 hearings with both eyes either closed or  
13 partially closed?  
14 A I don't recall anytime during the hearing where  
15 both eyes were closed, no.  
16 Q All right. Would you agree with me that if one  
17 eye was closed or partially closed and the other  
18 eye open for an extended period of time, that  
19 that might cause either the open eye or both eyes  
20 to become fatigued?  
21 MS. GRIGSBY: Objection.  
22 THE WITNESS: I have no knowledge of  
23 what that would cause.  
24 BY MR. BELAZIS:  
25 Q Well, let's try for a second.

Page 184

1 MS. GRIGSBY: Objection.  
2 THE WITNESS: Go ahead.  
3 BY MR. BELAZIS:  
4 Q No, I'm serious. Close your eyes.  
5 MS. GRIGSBY: No, don't.  
6 BY MR. BELAZIS:  
7 Q Would you do it for me? I would like you to  
8 close one eye and just open the other?  
9 MS. GRIGSBY: I'm going to object and  
10 I'm going to instruct you not to engage in that kind  
11 of demonstration.  
12 MR. BELAZIS: Why is that?  
13 MS. GRIGSBY: I don't think it's  
14 appropriate. I don't think it's a fair question  
15 and I don't think the record is going to pick it  
16 up. I just -- you're here to ask questions, not  
17 to have him perform physical acts.  
18 MR. BELAZIS: Okay.  
19 BY MR. BELAZIS:  
20 Q During the computer training that resulted in a  
21 discipline against Carol based on allegations  
22 that she had been sleeping during the training,  
23 were you present at all during that training  
24 session?  
25 A The initial day of training I was there for the

46 (Pages 181 to 184)

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Page 185

1 first half hour, 45 minutes. I introduced the  
 2 trainer, welcomed the staff to be there, thanked  
 3 them for their time. And then I may have popped  
 4 my head in once or twice just very briefly as a  
 5 general observation.  
 6 Q Okay. Were you there again at the end?  
 7 A I came in the last day at approximately 3:00 if I  
 8 recall right as the training was ending. And  
 9 that was due to the accusations that had been  
 10 made.  
 11 Q Okay.  
 12 A And Carol had already left at that point.  
 13 Q Who was the trainer, do you recall?  
 14 A Jordie, I don't remember Jordie's last name,  
 15 Jordie Williams maybe. Jordie was his first  
 16 name, he was from Apple Computer Supply.  
 17 Q Where are they located?  
 18 A Cupertino, California.  
 19 Q Did he fly in for that?  
 20 A I don't know where Jordie resides. He could have  
 21 flown in, he could have driven in. We had  
 22 multiple trainers and multiple sessions all  
 23 summer long. We had, I think, ten different  
 24 four-day sessions throughout the summer that  
 25 teachers signed up for voluntarily. I originally

Page 187

1 documents, it appears that there was, I believe  
 2 you testified that there was a meeting with you  
 3 and Mr. Zraik?  
 4 A Yes.  
 5 Q Is that correct?  
 6 A Yes.  
 7 Q Could you tell me who all was at that meeting?  
 8 A Mr. Zraik, myself, Carol Smith, and John Gerber,  
 9 PEA president?  
 10 Q Can you describe as accurately as you can the  
 11 conversation that occurred during that meeting?  
 12 A Sure. Mr. Zraik entered with his wife and I  
 13 believe his assistance dog. It was obvious that  
 14 Mr. Zraik was blind. He came in, we helped him  
 15 seat himself, his wife made sure he was  
 16 comfortable, and then she took the dog and left.  
 17 We were in a conference room at the  
 18 administrative service center about this size  
 19 around a table of similar size. Mr. Zraik sat  
 20 where Mr. Finn would be at the head of one side  
 21 with Mr. Gerber to his right and Carol Smith to  
 22 his left, and I sat at the other end of the table  
 23 for the proceedings. I introduced myself to Mr.  
 24 Zraik. He had already previously met Mrs. Smith  
 25 and John Gerber as her union representative and

Page 186

1 scheduled five. The demand was so great I had to  
 2 add, I believe, five more, so I think there were  
 3 ten in the final numbers, so that every teacher  
 4 who wanted to could go throughout training.  
 5 Q I'm sorry, was there more than one training  
 6 session?  
 7 A Oh, yes.  
 8 Q Okay.  
 9 A Yes, yes. The one went on all summer long, so  
 10 different teachers at different times, groups of  
 11 about 15 together at a time.  
 12 MR. BELAZIS: Okay, I think that's all  
 13 I have. Thank you.  
 14 MS. GRIGSBY: I have some follow-up  
 15 questions, just a few, following up on certain  
 16 things that Mr. Belazis has raised today.  
 17 CROSS-EXAMINATION OF JIM GUNNER  
 18 BY MS. GRIGSBY:  
 19 Q You were asked, I think, about Exhibits 4 and 5.  
 20 4 being some correspondence from Attorney Tom  
 21 Zraik. Strike the reference to 5, but  
 22 specifically about Exhibit 4.  
 23 A Okay.  
 24 Q Various documents that had been exchanged between  
 25 you and Mr. Zraik. And based upon those

Page 188

1 introduced himself as well. I then referenced  
 2 his letter of accommodations and said that, you  
 3 know, today's meeting was to discuss his request  
 4 for us to consider accommodations for Carol, and  
 5 that we would try to do what we could to address  
 6 any concerns that he or Carol had. We talked  
 7 through a variety of items from simple things  
 8 like Carol felt uncomfortable giving blood sugar  
 9 tests, glucose tests, and especially insulin  
 10 shots in front of students, and wanted a  
 11 different location to have that shot. We agreed  
 12 that we would provide her access to the nurse's  
 13 office when at Briar, and the conversation -- let  
 14 me back up -- started with Mr. Zraik explaining  
 15 that Carol had diabetes, and that there were  
 16 obviously some concerns about diabetes impacting  
 17 her wellness on any particular day, that there  
 18 are certainly highs and lows with diabetes. I  
 19 think that we talked a little bit about the fact  
 20 that I am aware somewhat of the disease because  
 21 of my daughter, and I may have also mentioned  
 22 that my father was Type 2 diabetic, to try to  
 23 explain it, you know. I didn't feel Mr. Zraik  
 24 had necessarily given me an indepth detailed  
 25 description of diabetes. That led to Mr.

47 (Pages 185 to 188)

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Page 189

1 Zurich's letter where he had listed  
2 accommodations that were, I don't want to say  
3 proposed, he listed them as possible or  
4 reasonable accommodations, and we went down the  
5 list and we talked about each one of those  
6 accommodations. We discussed, you know,  
7 utilizing the nurse's office for taking insulin  
8 shots. Mrs. Smith indicated that many times she  
9 gave them in her abdomen and that she just was  
10 not at all comfortable giving them in her  
11 classroom. She expressed concerns that this  
12 particular keyboarding class was after lunch, and  
13 that she tended to have more concerns with  
14 diabetes at that time, that her blood sugar  
15 tended to go higher after eating, and she agreed  
16 that the nurses office would be an acceptable  
17 alternative. We discussed that if she needed to  
18 give herself a shot or at any time felt ill or,  
19 you know, where she was lethargic, or in any way  
20 being affected by the diabetes, that if she  
21 called down to the office, the office would send  
22 somebody up immediately to cover for her. And we  
23 got to Item 3 on his list, Mr. Zurich's list  
24 which talked about asking us to basically have  
25 somebody, anytime that she appeared to be

Page 191

1 at all, that if she could have juice with her or  
2 a candy bar with her in the classroom or some  
3 sort of snack, that that's all she would need  
4 because she would feel that issue coming on well  
5 enough in advance to be able to offset it. We  
6 left the meeting I thought under good terms. I  
7 thought that everybody had agreed to a few  
8 modifications that I then later put in writing in  
9 terms of, as a follow-up to Mr. Zraik and Mrs.  
10 Smith. And to today, other than through the  
11 termination hearing, or in the proceedings that  
12 followed that, I have never had Mrs. Smith ask me  
13 again for any other accommodations or inform me  
14 that the accommodations that I agreed to that day  
15 and directed the middle school to put in place  
16 were either not working or ineffective or that  
17 she needed anything beyond what we agreed to that  
18 day.  
19 Q Okay. During the course of that meeting, did Mr.  
20 Zraik or Mrs. Smith make any statements about  
21 having complications from eye surgery or an eye  
22 injection that caused her a particular problem?  
23 A No.  
24 Q There was also discussion about some discipline  
25 that was imposed on Mrs. Smith in the time frame

Page 190

1 sleeping, lethargic, clothing her eyes, out of  
2 it, that he wanted a kid, an adult, to approach  
3 her and wake her up and ask if she was okay. And  
4 I said, in a classroom setting, that's just  
5 really unreasonable, that, I, it would be  
6 unreasonable to have a student do that, and I  
7 can't guarantee there's an adult in every  
8 classroom at all times. We did discuss, we  
9 assigned educational aides to students who have  
10 medical issues or educational issues, the  
11 possibility, I offered the possibility of  
12 assigning an aide to that class so that there  
13 would be an adult there. If we would assign the  
14 aide and the aide would work with the students,  
15 from the student's perspective, that the aide was  
16 no different than they would see it in any other  
17 classroom, that the students wouldn't know that  
18 the aide was there necessarily to assist with  
19 Carol. Mrs. Smith absolutely refused. She said  
20 she would be embarrassed to have another adult  
21 there and know and that, again, she adamantly  
22 denied that she was ever unaware of what was  
23 going on in the classroom and felt that she  
24 didn't need that. In fact, told Mr. Zraik that  
25 she really didn't need this kind of accommodation

Page 192

1 of March, 2009, and was there a meeting held at  
2 which you were present and Mrs. Smith was present  
3 at which those disciplinary issues were  
4 discussed?  
5 A Yes, is there a document I can refer to?  
6 Q Yes.  
7 A A series of documents I'm sure in here.  
8 Q I direct your attention to Exhibit 5.  
9 A March of 2009, Exhibit 5 has two letters in it.  
10 I was made aware by Mr. Finn that on  
11 February 25th, that Carol Smith had failed to  
12 show up at the middle school for her assigned  
13 duties, and that through a subsequent process of  
14 communicating with Mrs. Smith, he learned that  
15 she was confused over the schedule for that day,  
16 and because it was an early release day, so the  
17 time schedules for the two buildings changed a  
18 little bit. Even though we had done it multiple  
19 times before that year, Mrs. Smith was confused  
20 and failed to supervise the two in-school  
21 suspension classes that day. It's my  
22 understanding that she did eventually show up for  
23 the sixth grade keyboarding class.  
24 Q Now, did you have a meeting face-to-face with  
25 Mrs. Smith at any time in connection with that

48 (Pages 189 to 192)

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Page 193

discipline?

A Yes. Mr. Finn at that time felt that he had already gone through a disciplinary hearing earlier within the year where he had given her a written reprimand. Prior to that, she had had verbals from the high school staff. He felt that the -- again, the consequences for this one were going to be some sort of suspension. So he referred it to me based upon the negotiating agreements language that indicates the superintendent is the only one who can suspend an employee. So based upon all of that, I sent the first letter dated March 27, 2009 to Mrs. Smith requesting a disciplinary conference to be held in my office on March 31st at 3:00, and then, again, gave her an education of why, and also that she could have union representation present at the meeting.

Q And the meeting was indeed held?

A The meeting was indeed held. Present at the meeting was Mrs. Smith, John Gerber, her union representative, and myself. Again, same scenario in terms of seating as described earlier. My conversation with Mrs. Smith that day, I asked her about, one, I reminded her there was a

Page 195

then proceeded over to the sixth grade keyboarding class. I asked her -- there was an accusation about, that she might have been seen at Wendy's that afternoon during that time frame. She became really defensive and adamantly denied, that there was no way she was at Wendy's, that she had just had some surgery, she didn't allude to what type of surgery, but she had just had some surgery, and there was no way I could be eating Wendy's at this time. Based upon that conversation, I asked her, this was the first that I was aware that she had had any surgery. I then asked her again, was there any medical condition, including diabetes or any other medical condition that may have been causing her to miss these classes, there may have been a reason for her to miss these classes, that I needed to be aware of them. She adamantly denied it, said she simply screwed up. She messed up the time schedule, and it had nothing to do with anything that may or may not be wrong with her medically. At that point I thanked her and then made the decision that I reflected in the April 2nd letter, which was to issue her a three-day unpaid suspension to be served

Page 194

disciplinary hearing, and that anything she said and anything that I discovered could lead to disciplinary action, and that I wanted to ask her a few questions about what happened that day and was she willing to answer those, and she responded she was. I asked her, in her own words to tell me what had happened. She readily said that she got confused over the change in the time schedules. She indicated that she had spoken to a secretary at the high school who told her that in essence she was done at the high school and wasn't needed at the middle school, may have referenced her normal time. I don't recall. She, to my knowledge, I don't know that she followed up with the middle school to be sure, but in essence, admitted that she had missed the two classes. There was also an accusation at the time that she was sleeping in her car, or at least in her car in the parking lot between Perkins High School and Briar Middle School. As we discussed earlier, one of the middle school custodians informed Mr. Finn of that. She indicated she was in her car, she wasn't sleeping, that she had chosen to give herself an insulin injection at that time in her car. She

Page 196

April 21st, 22nd and 23rd.

Q Did she make any statements in that meeting with respect to an eye condition or an infection subsequent to eye surgery which may have some lingering adverse medical effects upon her?

A No.

Q Did she tell you in that meeting or the prior meeting we just spoke of that she had some kind of eye condition that caused her to be sensitive to light?

A No.

Q Now, we spoke earlier, or you spoke earlier about the investigation that you did with regard to the allegations of inappropriate discussion of pornography?

A Yes.

Q Were there meetings with Mrs. Smith, I believe you did indicate that there were meetings with Mrs. Smith in the wake of that investigation in which that matter was discussed with her; is that correct?

A Yes.

Q Was there one or more than one meeting?

A There were two meetings to my recollection.

Q Tell me who was present at the first meeting.

49 (Pages 193 to 196)

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Page 197	Page 199
<p>1 A First meeting was Carol Smith, Erica Clay, who is</p> <p>2 an OEA representative, and John Gerber, who is</p> <p>3 again, a local POE representative.</p> <p>4 Q By OEA, you're referring to --</p> <p>5 A The Ohio Education Association.</p> <p>6 Q Was she based here locally or from Columbus?</p> <p>7 A I believe she was a regional rep, somewhere in</p> <p>8 the Cleveland area. I don't know exactly where</p> <p>9 she came from, more regional than Columbus.</p> <p>10 Q Can you tell me roughly when that meeting took</p> <p>11 place?</p> <p>12 A I believe it was April 1st.</p> <p>13 Q Okay. Tell me what you recall being said by the</p> <p>14 various participants in the meeting.</p> <p>15 A Okay. Again, same sort of process. I had sent</p> <p>16 her this letter informing her what the</p> <p>17 allegations were. I brought her in. They sat at</p> <p>18 one end around the table, I sat at other end. I</p> <p>19 proceeded to ask her questions about each of the</p> <p>20 allegations. And in reference to the</p> <p>21 pornography, she readily agreed that there was a</p> <p>22 conversation about pornography in the classroom,</p> <p>23 that her recollection was that it was initiated</p> <p>24 by a student, same porn or something to that</p> <p>25 effect, and she was discussing yellow journalism</p>	<p>1 the time when the kids may have perceived you to</p> <p>2 be sleeping; were you fully aware of everything</p> <p>3 going on in the classroom during the study hall</p> <p>4 time frame. And every time she denied that she</p> <p>5 was ever sleeping, that she ever dozed off. Her</p> <p>6 words were, sometimes I have to rest my eyes,</p> <p>7 they get tired, they ache. I contributed that to</p> <p>8 our previous conversation about diabetes and</p> <p>9 maybe become some reference to the medical</p> <p>10 condition that she had shared with me earlier.</p> <p>11 In fact, Erica Clay, her representative at that</p> <p>12 point, interrupted and asked Carol, "Are you</p> <p>13 saying that your diabetes makes you tired, and</p> <p>14 you have to close your eyes?" And Carol got</p> <p>15 angry and said, "Absolutely not. I told you I</p> <p>16 wasn't closing my eyes. I may rest them for a</p> <p>17 few seconds, but I'm fully aware of everything</p> <p>18 going on in the classroom at the time." So I</p> <p>19 asked her questions like, if you're fully aware</p> <p>20 of what's going on in the classroom, would you</p> <p>21 permit students to be playing, you know,</p> <p>22 basketball with empty plastic Gatorade containers</p> <p>23 in your classroom, is that an acceptable behavior</p> <p>24 to allowed in a classroom? And the answers were</p> <p>25 no. And I said, so would it surprise you to say</p>
Page 198	Page 200
<p>1 and sensationalism. She then took that comment</p> <p>2 to use pornography in her mind as a sample of</p> <p>3 sensationalism or yellow journalism. She readily</p> <p>4 admits to a conversation where she talked about</p> <p>5 or used the terms Playboy and Playgirl readily</p> <p>6 indicating that she knew that the students read</p> <p>7 or have seen those magazines or something</p> <p>8 similar. She denied that she herself personally</p> <p>9 had ever looked at those magazines or told the</p> <p>10 kids that she had, but she did admit to</p> <p>11 referencing Burt Reynolds and -- I'm drawing a</p> <p>12 blank on the other actor's name, but another</p> <p>13 famous actor who had appeared in some of the</p> <p>14 covers of Playgirl that were shown to us earlier.</p> <p>15 She -- her recollection was similar to the</p> <p>16 students' in that it was a 5 to 10-minute</p> <p>17 conversation maximum. And then she redirected</p> <p>18 them back to a more indepth conversation about</p> <p>19 yellow journalism and sensationalism. I then</p> <p>20 talked -- and I asked her about the students'</p> <p>21 statement regarding dozing off or sleeping,</p> <p>22 especially during study hall time frame. I asked</p> <p>23 multiple times, multiple ways, things like, were</p> <p>24 you ever asleep for even, you know, 30 seconds?</p> <p>25 Did you close your eyes for a minute or two at</p>	<p>1 that the kids said during study hall that's</p> <p>2 something, that's the actions they took. She</p> <p>3 said that never happened in my study hall. I</p> <p>4 would have seen that. I asked her, you know,</p> <p>5 would you allow students to play movies on their</p> <p>6 laptops during class or during study hall and she</p> <p>7 said, no, the only movies would be that I showed</p> <p>8 them that were tied to the curriculum. And I</p> <p>9 said, what were your expectations of students</p> <p>10 during study hall? And it was that, you know,</p> <p>11 that they should be working independently or</p> <p>12 sometimes in small groups. And if they were in</p> <p>13 small groups I would let them talk and work. So</p> <p>14 I said, would it surprise you that many students</p> <p>15 said that they were free to watch movies whenever</p> <p>16 they wanted, that they were free to play their</p> <p>17 music, and sometimes so loud that other students</p> <p>18 would yell across the room to have one student</p> <p>19 turn down the music. She said that there's no</p> <p>20 way I would have known that was happening and I</p> <p>21 wouldn't have permitted that. I asked her about</p> <p>22 the diabetes, I said, "Carol is there any way,</p> <p>23 again, diabetes, any medical issue that may be in</p> <p>24 any way causing these episodes or the perception</p> <p>25 from now students and staff that you are sleeping</p>

50 (Pages 197 to 200)

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Page 201

1 in class or unaware of what's going on in class,  
 2 even for short periods of time and she got  
 3 adamant again and said, "I told you, I was never  
 4 sleeping, I'm aware of everything that's going on  
 5 in the class. The only time I ever slept was the  
 6 one time I told you for a few seconds in ISI when  
 7 there were no students present at the middle  
 8 school. I then went on to talk about the tardy  
 9 issue and her claim was that maybe once or twice  
 10 she might have been tardy, but tardy is simply  
 11 walking in the class as the bell was ringing,  
 12 never 5, 10, 15 minutes tardy as the kids  
 13 explained, and not certainly every week or two or  
 14 three times a week. I asked her, I usually do at  
 15 the end, is is there anything else that I need to  
 16 know, anything that I should consider before I  
 17 make a decision on how do I handle this? And I  
 18 asked Erica, her representative, John Gerber, her  
 19 representative, and Carol, all that same  
 20 question, is there anything else you want to tell  
 21 me, anything else I should know before I make  
 22 this decision, and they all said no.

23 Q And when you asked her point blank about medical  
 24 conditions that might be giving the appearance  
 25 that she might be sleeping or cause somebody to

Page 202

1 believe that, did she say anything about an eye  
 2 condition or a consequence, a lingering  
 3 consequence from complications of eye surgery?

4 A No.

5 Q Now you said that there was a second meeting?

6 A Yes, when I started talking about student  
 7 statements and student -- my interviews with  
 8 students, Erica Clay, her union representative  
 9 objected because they had not had a chance to see  
 10 those, they had not had an opportunity review  
 11 them. They asked to have copies of those. I  
 12 shared with them that I needed to consult with  
 13 legal counsel before I gave them copies of  
 14 statements by students that had students' names  
 15 in them. Erica indicated that she would agree --

16 MR. BELAZIS: Could we -- I'm sorry to  
 17 interrupt. There are some possible issues of  
 18 privilege pertaining to discussions involving  
 19 representatives in a union-related proceeding and  
 20 I would like to object to the testimony. Nothing  
 21 I can do to keep him from testifying obviously,  
 22 but I would like to preserve my objection to  
 23 privilege for the record.

24 MS. GRIGSBY: I understand. So noted.

25 THE WITNESS: I indicated to Ms. Clay

Page 203

1 that, again, I would check with legal counsel, as  
 2 and long as legal counsel was comfortable, I  
 3 would be glad to provide them the documents, the  
 4 statements of the students as requested. I also  
 5 agreed that, due to that fact, that I would meet  
 6 with him a second time after they had a chance to  
 7 review them before making any decision on how to  
 8 proceed.

9 MS. GRIGSBY: So I'm going to then ask  
 10 you about a next meeting, but the court reporter  
 11 would like to take a break.

12 (Off the record.)

13 BY MS. GRIGSBY:

14 Q And you were about to tell us, Dr. Gunner, about  
 15 the second meeting that you had with Carol and  
 16 others following your investigation of the  
 17 accusations that were made in the spring of 2010.

18 A After the April 1st meeting, I consulted for  
 19 legal advice and was given the okay to release  
 20 the records as requested by the OEA  
 21 representative, Erica Clay, to go ahead and  
 22 redact the student names. In fact, we went one  
 23 step further and took all of my notes and  
 24 produced those with redacted student names even  
 25 though they had not been specifically requested

Page 204

1 to ensure that they had all the information we  
 2 had in regard to my investigation.

3 MR. BELAZIS: Excuse me, just so I  
 4 don't interrupt Dr. Gunner testimony, is it okay  
 5 if I have a continuing objection on the issue of  
 6 privilege?

7 MS. GRIGSBY: Yes, sir.

8 MR. BELAZIS: Thank you.

9 THE WITNESS: From that, I then sent  
 10 them a letter April 5th scheduling a second  
 11 meeting for Monday April 12 at 4:00 in my office.  
 12 When I say them, I mean Carol Smith and John  
 13 Gerber and Erica Clay. I sent all of the  
 14 requested documents to Erica Clay's law office,  
 15 and I waited on April 12th for them to arrive.  
 16 Nobody showed up. I then assumed that maybe  
 17 after reviewing the documents, they did not want  
 18 to meet with me further, so I sent a letter  
 19 April 13th indicating that it was my intent to  
 20 recommend the termination process beginning to  
 21 the board at our April 14th board meeting that  
 22 month. I actually hand delivered that to Carol  
 23 Smith's house to ensure that it got delivered  
 24 before the board meeting and I also made sure  
 25 that I sent it both, you know, mail and by email

51 (Pages 201 to 204)

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Page 205	Page 207
<p>1 to Erica Clay and I noticed that she received it  2 because she called me within 5 or 10 minutes of  3 it arriving by email and claiming that they knew  4 nothing about the April 12th meeting, that she  5 had never been informed. And I indicated, well,  6 I sent to you a letter with documents, all the  7 documents you requested, and in that letter I  8 indicated that we would meet again on the 12th.  9 And she said, well, I never received the letter.  10 Put me on hold, asked to put me on hold a second.  11 Came back and apologized and said, we did receive  12 your letter last Thursday in my office,  13 unfortunately, I didn't see it. Could you and  14 would you agree to meet with us prior to going to  15 the board. And I said, as long as you would  16 agree to meet with me prior to the 6:00 p.m.  17 April 14th board meeting, I will give you another  18 meeting. We agreed to meet at 1:00 on  19 April 14th. And we held another meeting that  20 day. Present that day was Carol Smith, Erica  21 Clay, and Tom Kinsel. For some reason, John  22 Gerber, PEA representative, was not present. We  23 began, again, to have another conversation about  24 the three grounds or specifications for seeking  25 her termination, really not a whole, it was</p>	<p>1 one incident at the middle school. We concluded  2 the meeting with the understanding that I was  3 going to proceed with recommending her  4 termination to the board that evening. I asked  5 them to wait a few minutes while I modified the  6 letter so that I could hand deliver it to all of  7 them before they left, and I did that indicating  8 that I would be recommending her termination to  9 the board that evening at 6:00.  10 BY MS. GRIGSBY:  11 Q And we talked earlier, Mr. Belazis asked you some  12 questions about the two incidents that occurred,  13 well, one at the end of the prior school year and  14 one during the summer of that school year, one  15 involving allegations of sleeping in the  16 observation of a Social Studies class, and the  17 other allegation of sleeping with respect to  18 attendance at a technology seminar. Now, were  19 you present in a meeting with respect to the  20 first one, the Social Studies allegation, the  21 allegations of sleeping while observing the  22 Social Studies class?  23 A No, Chris Gasteier held that meeting. I had  24 verbal conversations with him afterwards. He  25 felt that there was ample evidence that she was</p>
Page 206	Page 208
<p>1 actually a really short meeting, half hour, maybe  2 45 minutes. There was, again, a conversation  3 where Erica Clay brought up Carol's diabetes and  4 offered to Carol, "Carol is some of what's going  5 on here related to your ability to control your  6 diabetes?" Carol immediately got upset and cut  7 her off, and again said, "I've told you, I've  8 never fallen asleep in this class. I was awake  9 at all times, it has nothing to do with my  10 diabetes." I then stepped in, started to ask the  11 question again: "Is there any medical condition,  12 including your diabetes or others?" Erica cut me  13 off, we had sort of a tit-for-tat for a couple of  14 seconds, and then finally I told Erica, "This is  15 my meeting, not yours. I'm going to ask the  16 question, and whether your client choses to  17 answer or not, that's up to you, but I'm going to  18 ask it." So I asked again, "Carol is there any  19 medical condition, including your diabetes, is  20 there anything at all that is causing these  21 episodes, that is prohibiting you from fulfilling  22 your full duties as a teacher?" And the answer  23 again was no, I told you, I wasn't sleeping, I  24 was aware, you know, the only one time I was  25 sleeping, again" -- and she pointed back to the</p>	<p>1 sleeping, felt that, based upon the history, that  2 it was going to warrant disciplinary action or  3 the suspension or greater so he referred it to  4 me. I chose to suspend Carol for ten days unpaid  5 at that time, and also to request a medical  6 evaluation of her as permitted by contract. But  7 I never met with her on that one.  8 Q Referring then to Exhibit 8, which I believe you  9 looked at earlier today, and the last bullet  10 point on page 1 of that document.  11 A Yes.  12 Q It indicates, it says, "Your denial of being  13 asleep while directed to observe Social Studies  14 classes instructed by your colleagues and you  15 claim that you have 80 percent blindness in your  16 right eye and were simply resting your eyes and  17 were totally aware of all class activity during  18 the time in question." Is it your testimony that  19 she did not make that statement to you  20 personally, but you're reporting what Mr.  21 Gasteier told you?  22 A That is correct. I was not in this meeting, Mr.  23 Gasteier told me that that was a comment that she  24 made to him.  25 Q And in these various conversations that you had</p>

52 (Pages 205 to 208)

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Page 209

1 with Carol in which she indicated that she had no  
2 medical conditions that was causing these  
3 episodes of apparent sleeping, did she bring this  
4 issue up?

5 A She did not. She would bring up resting her  
6 eyes, but she never brought up, you know,  
7 80 percent blindness or anything to that effect.  
8 I made the assumption based upon the only claim  
9 that she brought to me medically, was diabetes,  
10 that this was all related somehow to the  
11 diabetes.

12 Q And I believe we talked earlier today about the  
13 fact that you were present in a meeting with  
14 Carol in which you discussed the incident of  
15 alleged sleeping in the technology seminars?

16 A Right. Again, same process, I invited her to a  
17 hearing in the middle of the summer, I want to  
18 say July 7th without the documents in front of  
19 me. Present at that time, again, if my memory is  
20 correct, was Carol, John Gerber and myself.  
21 Confronted her with the evidence of her  
22 colleagues, Nancy Kinsel, Sharon LaRose Smith,  
23 the instructor that day from Apple. She, again,  
24 claims that, you know, she was not sleeping, she  
25 might have been resting her eyes, it would have

Page 210

1 been short duration, and that she was fully aware  
2 of everything that was going on in the class. I  
3 made the determination that she was in fact  
4 sleeping based upon the evidence I had from the  
5 other teachers and the instructor. I issued her  
6 a dock in pay of one hour for each day of the  
7 training, but more importantly, at the end, I  
8 changed my final sentence in these documents  
9 where that should there be any future incidents,  
10 it was no longer -- I may seek her termination,  
11 but that I would seek her termination of  
12 employment, and I bold-faced that to make sure  
13 she understood that I had reached my limit.

14 Q Following any of these conversations, did Mrs.  
15 Smith ever bring to you any kind of medical  
16 evidence or medical proof that she suffers from  
17 some kind of physical condition that was causing  
18 the perception of apparent sleeping that was  
19 noted by these people who had brought those  
20 concerns to your attention?

21 A The only evidence Mrs. Smith ever brought to me  
22 directly was the diabetes claim with Mr. Zraik.  
23 I was aware of the NOMS note that also indicated  
24 diabetes as a possible cause of lethargy and  
25 tiredness that she had, the nurse practitioner

Page 211

1 from NOMS provided Mr. Finn. Other than that,  
2 until the termination hearing I was not aware of  
3 any other medical conditions with Mrs. Smith  
4 beyond, again, this sort of generic surgery she  
5 had in January, I believe, of 2009, that I was  
6 not aware of what the surgery was at the time.

7 Q You were referring to a portion of Exhibit 4 when  
8 you said the NOMS document?

9 A Yes.

10 Q And that is the letter addressed to the Perkins  
11 Middle School signed by Michelle Poulos on behalf  
12 of the Northern Ohio Medical Specialists Group?

13 A Yes.

14 Q And a part from that document, which is part of  
15 Exhibit 4, did Mrs. Smith ever provide you any  
16 kind of written information or evidence or  
17 documentation suggesting that she had some kind  
18 of medical condition that would require some kind  
19 of accommodation?

20 A Never. Not even in the diabetes conversation was  
21 there ever any medical evidence produced. This  
22 document came after that. And in a subsequent to  
23 email, or in a subsequent letter to Steve Finn  
24 that arrived in my office after I had met with  
25 her, I took her for her word that she did have

Page 212

1 diabetes and -- but that was the only medical  
2 condition she ever raised with me at any time  
3 during this process.

4 Q Did she ever indicate that, gee, the  
5 accommodations that you have provided with  
6 respect to diabetes aren't sufficient, I need  
7 something more, I need something different, I  
8 need something additional?

9 A No. It was my understanding that the  
10 accommodations we had put in place were, one,  
11 falling in place and fully functioning. I was  
12 not aware that there were some concerns on her  
13 part that at times we did have somebody to send  
14 up to her classroom or, you know, to either  
15 relieve her to do a shot or a blood test. That  
16 did not come to my attention until, I want to  
17 say, the actual termination hearing. I was not  
18 aware. In fact, I was quite surprised when that  
19 information was shared.

20 Q Okay. Can you explain to me how her fifth period  
21 class period was segmented in the final year of  
22 her teaching?

23 A Yes. That particular year the high school  
24 decided to have four lunch periods over what they  
25 titled fifth period. So it was period A, B, C,

53 (Pages 209 to 212)

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Page 213

1 D, and two of those you would teach, you would  
 2 have a classroom instruction. In Carol's case,  
 3 that would be A and B. So the first  
 4 approximately hour of that two-hour time frame  
 5 would be direct instruction to students and the  
 6 Social Studies class. In Carol's case, the third  
 7 one, or C, the third half hour was lunchtime. So  
 8 the kids would leave her classroom, go down and  
 9 eat lunch. That was Carol's lunchtime. So she  
 10 also could leave and go to the faculty lounge and  
 11 eat lunch, and she really was free to do anything  
 12 at that time. And then the last half hour the  
 13 students would return to those classes, and it  
 14 would be a study hall, so that they had time to  
 15 work on their homework from her class, any class  
 16 in particular, but it was always a structured  
 17 study hall. So every student was given,  
 18 basically, a 30-minute study hall during that  
 19 block of time, either A, B, C, or D.  
 20 Q When you had conversations with students in the  
 21 wake of these allegations of an inappropriate  
 22 discussion of pornography and they spoke of her  
 23 being late or tardy to class, did they refer to  
 24 only the instructional portion of Period 5 or did  
 25 they refer to other portions of Period 5?

Page 214

1 A Most of the time in those conferences with  
 2 students, they would simply refer to Fifth  
 3 Period. At the time I was interviewing them, I  
 4 wasn't aware of the dynamics of Carol's Fifth  
 5 Period classes to when she had class, when she  
 6 had lunch, when she had study hall. It was  
 7 through the subsequent investigation that I found  
 8 that out. So I didn't really probe them on  
 9 specifically was it, you know, to the beginning  
 10 of the class or was it the study hall. I would  
 11 say that my recollection is the majority of them  
 12 were referring to class, that initial period, but  
 13 there were some that indicated study hall as  
 14 well.  
 15 Q Okay. Referring to Exhibit 28, which I believe  
 16 was marked today.  
 17 A What am I looking for?  
 18 Q You're looking for your letter to Dr. Kale.  
 19 A I don't know, it may be over here.  
 20 Q Okay.  
 21 A Okay.  
 22 Q It appears in this letter that you're trying to  
 23 brief Dr. Kale on some of the information that  
 24 you have concerning Mrs. Smith's medical  
 25 condition; is that correct?

Page 215

1 A Yes. I had a conversation with a nurse or  
 2 receptionist from St. Luke's Hospital  
 3 Occupational Health Clinic when I set this up and  
 4 she -- I had asked if I could speak to Dr. Kale  
 5 to provide him, you know, some of the background  
 6 of why we were requesting this assessment and she  
 7 indicated that Dr. Kale was way too busy to have  
 8 a phone conversation with me, but if I would  
 9 please send them something in writing, that he  
 10 would certainly look at that prior to doing the  
 11 evaluation, and that's what prompted this.  
 12 Q You state in this letter that Mrs. Smith  
 13 indicated she has a disability and needed  
 14 accommodations for her diabetes. Was it your  
 15 intent to be as thoroughly as possible about your  
 16 description of Mrs. Smith's statements concerning  
 17 her medical condition in this letter to Dr. Kale?  
 18 MR. BELAZIS: Isn't that a little bit  
 19 leading?  
 20 MS. GRIGSBY: Could be.  
 21 MR. BELAZIS: Okay, I object.  
 22 MS. GRIGSBY: Let me rephrase the  
 23 question.  
 24 BY MS. GRIGSBY:  
 25 Q What was your purpose in sending this letter to

Page 216

1 Dr. Kale?  
 2 A I was trying to give him background information  
 3 about why the school district was requesting this  
 4 evaluation, and that there had been a series of  
 5 incidences and that there had been this claim  
 6 from Mrs. Smith about her diabetes, and in  
 7 essence, I was trying to give Dr. Kale as much  
 8 information as possible to thoroughly evaluate  
 9 Mrs. Smith's ability to continue to teach.  
 10 Q Did you omit any information that's relevant to  
 11 Mrs. Smith's physical condition from this letter  
 12 that you had been made aware of?  
 13 A Not that I'm aware of at that time. I mean,  
 14 again, the only conversation I had with Carol  
 15 Smith regarding her medical condition was the one  
 16 meeting with Tom Zraik and John Gerber and Carol  
 17 Smith.  
 18 Q There was some discussion of an episode involving  
 19 Tim Obergefell which occurred prior to your  
 20 arrival as superintendent of Perkins, and you  
 21 mentioned that you thought that there had been a  
 22 written reprimand, but you had never seen it in  
 23 the file. Could it be that that document may  
 24 have been removed as a result of some contractual  
 25 obligation?

54 (Pages 213 to 216)

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Page 217

1 MR. BELAZIS: Leading.  
 2 THE WITNESS: I will say that, the only  
 3 thing I can say for certain is I've never seen it  
 4 if it was not in Tim Obergefell's file. In  
 5 reference to the contract, all I can say is there  
 6 is a clause in the contract that teachers can  
 7 request the removal of any disciplinary  
 8 documentation after 24 months. I have no  
 9 knowledge of whether Mr. Obergefell did that, nor  
 10 do I have any direct knowledge of whether he ever  
 11 had a letter in his file. I was told there was  
 12 one there.  
 13 BY MS. GRIGSBY:  
 14 Q Could you take a look at Exhibit 33? It's this.  
 15 A Oh.  
 16 Q 35, I'm sorry.  
 17 A That makes sense. It's 36.  
 18 Q That's it.  
 19 A That says 18.  
 20 Q That's from the prior.  
 21 A I don't see it here.  
 22 Q Okay. Is it in that stuff down there?  
 23 A That's what I thought, but it's not there. At  
 24 least I didn't see it.  
 25 MS. GRIGSBY: Do you have Exhibit 35?

Page 219

1 the Perkins educational community view it in the  
 2 same way?  
 3 A Yes.  
 4 Q And turning to page 2, would you read the title  
 5 of the first article that's referenced on the  
 6 left-hand side?  
 7 A "What Men Really Want From Women."  
 8 Q Would you consider a discussion of a periodical  
 9 that contains articles about what men really want  
 10 from women to be appropriate for a Social Studies  
 11 class?  
 12 A No.  
 13 Q Would you view it to be pornographic?  
 14 A From the title, I don't know that I would  
 15 ultimately say that, it depends on the content of  
 16 the article, but it could be.  
 17 Q What were the age of the students in Mrs. Smith's  
 18 Fifth Period Social Studies class?  
 19 A Typically 15 years old.  
 20 Q And what grade was that, again?  
 21 A I believe most of them were sophomores, there may  
 22 have been a few freshman, but I think most of  
 23 them were sophomores.  
 24 Q And turning to the third page, would you read the  
 25 title of the two articles, the last two articles

Page 218

1 THE WITNESS: It's your Playgirl stack?  
 2 MR. BELAZIS: Do I have it? Well,  
 3 nothing would surprise me.  
 4 MS. GRIGSBY: Okay.  
 5 THE WITNESS: Okay, I have it.  
 6 BY MS. GRIGSBY:  
 7 Q Okay. Dr. Gunner, looking at the first page of  
 8 Exhibit 35 which appears to be a copy of the  
 9 cover of a Playgirl magazine with Harrison Ford  
 10 on the front.  
 11 A Yes.  
 12 Q Would you read the title of the article under  
 13 bonus which, I believe --  
 14 A "Rick James Gets Funky About Sex."  
 15 Q And then would you read the little caption that  
 16 appears under the smaller picture of the young  
 17 man in the lower right-hand corner?  
 18 A "Dallas, New Heartthrob, Christopher Atkins in a  
 19 Nude Pictorial."  
 20 Q Would you consider a discussion of a periodical  
 21 that includes articles about a gentleman getting  
 22 funky about sex and appearing in a nude pictorial  
 23 to be pornographic?  
 24 A Yes.  
 25 Q And based upon your experience, would folks in

Page 220

1 on the left-hand side?  
 2 A "Facts About Foreplay Most Men and women Don't  
 3 Know But Should." "Special Nude Pictorial of the  
 4 Rich, Sexy and Powerful Men of Wall Street."  
 5 Q Do you consider discussion of a periodical which  
 6 contained articles about those topics to be  
 7 appropriate for a Tenth Grade Social Studies  
 8 class?  
 9 A Absolutely not.  
 10 Q And would you consider them to be pornographic?  
 11 A Yes.  
 12 Q Foreplay?  
 13 MS. GRIGSBY: I don't think I need to  
 14 go further with that.  
 15 Those are all the questions I have at  
 16 this time.  
 17 RECROSS-EXAMINATION OF JIM GUNNER  
 18 BY MR. BELAZIS:  
 19 Q I just have one question. Would you mind going  
 20 through Exhibit 15 and show me where each  
 21 instance in which there's some documentation in  
 22 your notes that a student indicated that Mrs.  
 23 Smith was late for study hall?  
 24 MS. GRIGSBY: Is that 14, Paul?  
 25 THE WITNESS: 13.

55 (Pages 217 to 220)

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Page 221

MS. GRIGSBY: 13.

THE WITNESS: In the second one it indicates she comes in five minutes late, it doesn't indicate whether it was class or study hall, but it was on a discussion about study hall.

Q Show me where you're pointing.

A Right here in the center. Gina Bing. I don't know from that reference in my notes whether that was class or study hall or not.

Elyse Deer references "Tardy a few times. No, let's just say she's late every day." No reference to class and/or study hall.

Max Funk, "Tardy a lot of class, they won't stop talking. She has to yell, arrives when the bell rings or after." No reference specifically to study hall.

Josh Roulus references, "Pretty much late daily. Sometimes on time, maybe late once a week." Again, doesn't indicate whether that's, in my notes, study hall or class.

There's an unnamed one, I'm not sure what the student's name is, "Talks about mostly late a period or two at the beginning of class, kids are just sitting around, takes a few

Page 223

Kendall Satler, "No, she's at least -- well, she comes in two or three minutes after the bell rings."

Michael Snyder, "Usually she's not in until after bell, a minute or two or so after the bell, sitting, talking, walking around."

Troy Spore, "She's present give or take a few minutes."

Erin Sullivan, "Either comes in when the bell rings or a minute or two after."

Dominic Thompson, "Doesn't make it before the bell because she's all the way upstairs and how old she is. Kids are talking to each other."

George Toldy, "She's usually a little late, kids are mostly playing games, mostly Tetris."

And I'm to Mr. Gasteier's notes at this point.

Q Okay. No reference to study hall, right?

A Not specifically, most of the references are to being late, without a specific reference to class or study hall.

MR. BELAZIS: That's all, thank you.

///

Page 222

minutes, she yells at everybody." Again, no reference to study hall in that particular case.

Bryon Logan, "Tardy to class every day or she walks in with the bell."

Rachel Moseley, "Tardy to class often, 5 to 10 minutes. When she does arrive we have to wait another 5 to 10, very unorganized."

Paige Miller, "Usually thirty seconds or so after the bell."

Cole Newman, "She's late pretty much every day, maybe two or three minutes."

Kory Newman, "Tardy, late every day, two to three minutes late every single day, almost always tardy to class, about two minutes after the bell."

This is from Devin O'Brien. "Loud, constant threats to get our attention."

Nathan Parrett, "Tardy usually one or two, maybe three minutes tops, moving around, usually takes ten minutes to get things going."

Nathan Parthemore, "Usually walking in the bell rings, but sometimes is late."

Anthony Pepitone, "Usually arrives a little late, gets out a book, either reads from the book or she gives worksheet."

Page 224

REDIRECT EXAMINATION OF JIM GUNNER

BY MS. GRIGSBY:

Q Just one follow-up on that very topic, which is, it appears, based upon your review, that you did not record one way or the other whether you were talking about study hall or the actual instructional period. Do you have a recollection of people telling you that she was tardy in the study hall period of that fifth, the broader Fifth Period segment?

A Yes, I do.

MS. GRIGSBY: I have nothing further.

MR. BELAZIS: No further questions for me.

MS. GRIGSBY: We'll reserve signature. (Off the record.)

MR. BELAZIS: Back on the record.

BY MR. BELAZIS:

CON'T RECROSS-EXAMINATION OF JIM GUNNER

BY MR. BELAZIS:

Q Dr. Gunner, which students told you that Mrs. Smith was late for study hall?

A I don't recall, sir, I couldn't tell specific names.

Q How many students told you that?

56 (Pages 221 to 224)

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Page 225

A Again, I can't give you specific numbers. As I stated earlier, certainly more indicated class than study hall.

Q But you can't think of a single student that said that she was late for study hall?

A No, sir, I cannot. By name, no, I cannot.

MR. BELAZIS: Off the record.

(Depositions proceedings were concluded at 5:10 p.m.)

/s/ \_\_\_\_\_

Page 227

CERTIFICATE  
STATE OF OHIO )  
) ss.  
COUNTY OF ERIE )

I, Brenda Huntley Roberts, Registered Merit Reporter and Notary Public within and for the State aforesaid, duly commissioned and qualified, do hereby certify that the within named JIM GUNNER was by me, before the giving of his deposition, first duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; that the deposition as above set forth was reduced to writing by me by means of Computer-Aided Transcription; that the said deposition was taken pursuant to Notice and was completed without adjournment; that I am not a relative or attorney of either party or otherwise interested in the eventual outcome of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office at Sandusky, Ohio this day of \_\_\_\_\_, 2014.

HUNTLEY REPORTING SERVICE  
Brenda H. Roberts, RMR, CRR, CTR  
CSR 13676  
Notary Public  
P. O. Box 1067  
Sandusky, Ohio 44870  
My commission expires 3/15/16



Page 226

#### DEPONENT'S CHANGES OR CORRECTIONS

Note: If you are adding to your testimony, print the exact words you want to add. If you are deleting from your testimony, print the exact words you want to delete. Specify with "Add" or "Delete" and sign this form.

DEPOSITION OF: JIM GUNNER

CASE: CAROL ANN SMITH vs. PERKINS BOARD OF EDUCATION, et al.

DATE OF DEPOSITION: Friday, April 4, 2014

Page LINE CHANGE/ADD/DELETE

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Page 228

CERTIFICATE  
STATE OF OHIO  
COUNTY OF \_\_\_\_\_

I certify that this deposition was signed in my presence by JIM GUNNER on the day of \_\_\_\_\_, 2014.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at \_\_\_\_\_, Ohio on this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

Notary Public

57 (Pages 225 to 228)

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